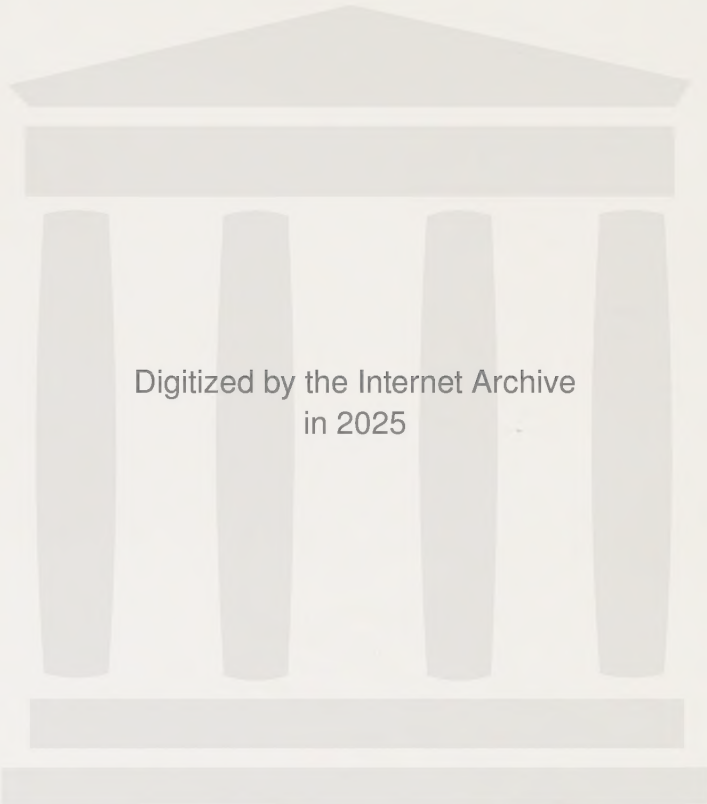


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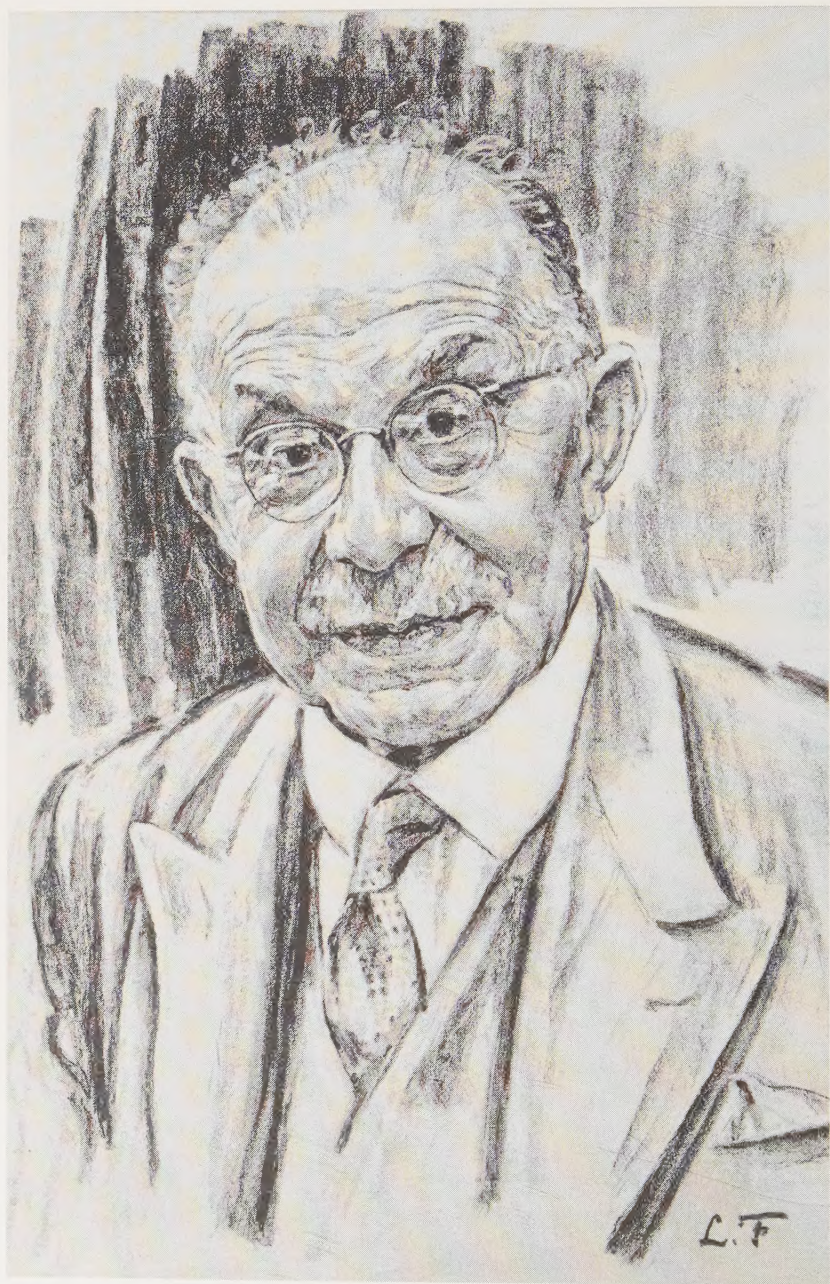
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Rabbi Bruno Italiener, ל"ז
February 6, 1881 – July 17, 1956

Rabbi Bruno Italiener, ר"ב

This past summer, attorney Alan Fell of New York approached me in my capacity as President of the College-Institute to tell me that the Ruth Ivor Foundation was interested in making a grant to HUC-JIR in memory of Rabbi Bruno Italiener (1881–1956). Rabbi Italiener was the father of the late Ruth Ivor, and Mr. Fell and the trustees of the Ruth Ivor Foundation wanted to make a donation to HUC-JIR that would pay appropriate tribute to Rabbi Italiener as well as his daughter. I immediately directed Mr. Fell and the Foundation to the *Hebrew Union College Annual*. The result was the generous subvention that has supported the publication of this scholarly volume. As I will now attempt to explain, no gift in memory of Rabbi Italiener could offer more fitting tribute to his values and commitments.

The life of Bruno Italiener cannot be understood apart from the legacy of *Bildung* stemming from the German Jewish world that formed him. Its openness to occidental culture and manners, as well as its commitment to traditional texts and religious piety, shaped his character, and Rabbi Italiener internalized its contours into his very being. He possessed enormous erudition in both Jewish and secular realms of knowledge, and displayed in his personal conduct a civility, a polite passion and intensity, characteristic of the world that spawned him.

Born in Burgdorf (Hanover) on February 6, 1881, Italiener attended the Jewish Samson School in Wolfenbüttel and then attended the Gymnasium in Hildesheim. In 1899, he enrolled as a rabbinical student at the Jewish Theological Seminary in Breslau and, in concert with the demands imposed by the modern German rabbinical seminary, simultaneously studied for his doctorate at the University of Breslau. Rabbi Italiener completed his examinations for the rabbinate in 1908, though he assumed the post of Liberal Rabbi of Darmstadt in 1907, months prior to his formal ordination. He occupied this position until 1914, returning in 1918 after serving as a chaplain in France for the German Army throughout World War I. It was at this time that Italiener became acquainted with a fellow Jewish chaplain, Rabbi Leo Baeck, who was also serving in France, and the two men soon began a close friendship that would last a lifetime.

It was during the decade of 1918–28 that Rabbi Italiener was catapulted into a position of great prominence on the German Jewish scene as a rabbinic leader who was also a meticulous scholar. Concerned over the rise of anti-Semitism in Weimar Germany in the years following World War I, Italiener raised his voice on behalf of the Jewish people and, in published writings that were widely disseminated, sought to defend the Jewish community from the growing hostility that was increasingly being directed against them during this era.

At the same time that he was engaged in this practical activity, Rabbi Italiener attained considerable prominence as a serious academic scholar of Judaism. During this period, he published a number of scholarly essays on the science of Judaism. However, it was through his authorship of a 1927 monograph on the history of illuminated Haggadot that Italiener earned his major fame as an academic. This monograph served as a supplement to his *Die Darmstädter Pessach-Haggadah*, a work on the fifteenth-century Darmstadt Haggadah written by the scribe Israel Jaffe of Heidelberg, Germany. Through this book, Rabbi Italiener achieved a reputation that endures to this day in scholarly circles. His work provided a critical edition of this Haggadah text, and offered an insightful and illuminating scholarly commentary that thoroughly surveyed the contents and analyzed the rituals of this uniquely illuminated Haggadah.

Interestingly, a Haggadah manuscript written by Meir Jaffe, the son of Israel, and closely related to the Darmstadt Haggadah was acquired by Dr. Adolph S. Oko, then Librarian of the Hebrew Union College, in 1924. This Haggadah manuscript resides today in the Klau Library in Cincinnati, and is now commonly referred to as the “First Cincinnati Haggadah.” In an article, “The Cincinnati Haggadah and its Decorator,” published in Volume XV (1940) of the *Hebrew Union College Annual*, Franz Landsberger supplemented the work that Rabbi Italiener had begun on the contents and rituals of this Haggadah by describing in great detail its pictorial adornments.

In light of the reputation he had attained, and at the recommendation of Rabbi Baeck, Rabbi Italiener was called in 1928 to serve the Jewish Temple Association in Hamburg, the first German Reform congregation (founded in 1817). Italiener served and guided the Hamburg community for a decade until the horror of Kristallnacht on November 9, 1938, brought an end to this historic congregation. Rabbi Italiener fled with his wife and two daughters to Brussels; in January, 1939, they successfully found refuge in London through the sponsorship of Chief Rabbi Dr. Joseph Hertz. The Italieners were also befriended at this time by Lily Montagu, who was familiar with Rabbi Italiener through their joint work in the World Union for Progressive Judaism. Montagu found a position for him as Rabbi at the Oxford and St. George’s Settlement in the East End of London, where Rabbi Italiener worked day and night with young German Jewish refugees whose world had been overturned. Here his essence as a rabbi was fully revealed through the comfort and direction he offered to these dispossessed.

In 1943, Rabbi Italiener was called to the West London Synagogue, where he served as Assistant Minister of the congregation along with Rabbi Harold Reinhart, Senior Rabbi of the community and a 1915 graduate of the Hebrew Union College in Cincinnati. Through the weekly seminars he initiated, Rabbi Italiener provided a platform for the numerous refugee teachers and rabbis who were

then in London. These seminars also provided a foundation for what would ultimately evolve into the Leo Baeck College for the education of Liberal rabbis and teachers in the United Kingdom and on the Continent. Rabbi Italiener ministered to the congregation and continued his academic researches until his untimely death in an accident in London on July 17, 1956.

The final academic publication of Rabbi Italiener, "Which is the Oldest Woodcut Haggadah?," was published in the *Journal of Jewish Studies* in 1956. At the conclusion of this meticulously researched and carefully argued essay, the editor of the *Journal* sorrowfully observed, "We regret to announce the sudden death of the author after the article had gone to press." His devotion to the academic study of Judaism and scholarship marked Rabbi Italiener until his final days.

While the German-Jewish world that was the arena of Rabbi Italiener's childhood may have suffered physical destruction, the spirit of that world and the kind of knowledge and scholarship to which Rabbi Italiener devoted his life and to which the *Hebrew Union College Annual* is dedicated continue to shine forth in these pages. The values that marked Rabbi Italiener and the ethos that informed him find expression through the essays contained in this volume. We at Hebrew Union College-Jewish Institute of Religion are grateful to Mr. Fell and the trustees of the Ruth Ivor Foundation for making this possible and for thus allowing Rabbi Italiener to provide us with instruction and guidance beyond the place of his eternal rest.

David Ellenson
President

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Halakhic Confrontation Dramatized

A Study of *Mishnah Rosh Hashanah* 2:8–9

AVRAHAM WALFISH

Herzog College and Bar-Ilan University

Few stories in rabbinic sources have had as profound an influence on the history of *halakhah* and Jewish thought as the story in *m.Roš Haš.* 2:8–9 of the confrontation between R. Joshua and Rabban Gamliel regarding the sanctification of the new moon. This multi-faceted narrative may serve as an excellent testing ground for the much-debated methodological issue as to whether talmudic narratives should be read as literary creations or as sources of reliable historical information.

Our story divides into five scenes, and the only character to appear in all five of them, Rabbi Joshua, may be readily identified as the main character of the story. The central role played by Rabbi Joshua in the story serves as a hermeneutical signpost of the story, which may guide the reader at certain exegetical crossroads in interpreting the narrative. The sophisticated deployment of seemingly trivial words such as ברא and הלך and the paranomastic use of the verbs עמד and קבל, underscore the dialectical nature of authority alluded to in Rabban Gamliel's closing encomium. By means of close reading techniques, we may find the inner logic and significance of seemingly problematic features of the narrative, which have led recent writers such as Daniel Schwartz and David Henschke to propose radical reinterpretations of the story based on philological attempts to reconstruct the original version from which the story currently recorded in the Mishnah has diverged.¹

LITERATURE AND HISTORY

The story of R. Joshua's and Rabban Gamliel's confrontation regarding the sanctification of the new moon (*m.Roš Haš.* 2:8–9) has left an indelible imprint on halakhic development and Jewish thought. There are few full-blown narratives in the Mishnah,² and the dramatic and historical components of our

1 I have briefly sketched some of the key points of this paper in "שיטת העריכה הספרותית במשנה" (Ph.D. diss.: Jerusalem: Hebrew Univ., 2001), as well as my articles: "משחקי הגאוגרפיה בקידוש החודש ובתקיעה בשופר ומשמעותה: עיון," *Netuim* 2 (1995) 79–80; "לשון במשנה במשנה במסכת ראש השנה ובמקבילותיה," *Mehqerei Yehudah veshomron* 11 (2002) 253–65. This paper considerably expands and develops the ideas presented in those publications.

2 There are many less fully-developed stories in the Mishnah. Recently Moshe Simon-Shoshan, "*Halakhah LeMa'aseh*: Narrative and Legal Discourse in the Mishnah" (Ph.D. diss.: Philadelphia: Univ. of Pennsylvania, 2005) 19–28. has suggested that most of the material in the Mishnah evinces one degree or another of "narrativity" (aspects of narrative), and see my discussion in "The Nature and Purpose of Mishnaic Narrative: Recent Seminal Contributions," *AJSR* 32 (2008) [3]–[12].

story set it apart from *m.B.Qam.* 8:7, *m. Yad.* 4:3, and similar narratives.³ Rabban Gamliel's paradoxical – if not mystifying – halakhic decision engenders a tense inner drama which pits R. Joshua's conscience against his loyalty to the religious establishment, and the painful personal conflict is mirrored and magnified by its communal and theological repercussions. As we shall see below, the verbal interplay and literary design of the story highlight the questions, ideas and human drama that render this story so central in understanding the halakhic thought of the Rabbis.

As a seminal source for rabbinic *halakhah*, *aggadah*, thought and history, our story can be used as a test case for evaluating research techniques and methods. Judaic scholars from diverse fields have analyzed this story from social and historical perspectives. Recently, the historian Daniel Schwartz suggested that this story reflects polemical confrontations between Rabbis and their opponents: priests and Christians.⁴ David Henshke, a talmudic scholar, adopted a different approach, interpreting our story as a paean to the House of the Patriarch.⁵ Aside from their detailed arguments, which will be addressed below, the similarity between the two scholars regarding both aims and methods of analysis raises important methodological issues. Difficulties in the language and plot of the story lead both scholars to reconstruct a conjectured original version of the story, whose main message lies in the domain of socio-political history. As opposed to their diachronic-philological approach, this article will demonstrate the power of a synchronic-literary approach to explicate textual difficulties, thus preserving the integrity of the current story as dramatizing conflicts of personality and clashes between values. Schwartz's reading, which locates in our narrative a polemical message, raises a further methodological issue debated by historians and literary scholars during the last four decades: may the historian assume the historicity of the narrative content, unless proven otherwise, or does the narrative form demand an exclusively literary reading, oblivious of historical considerations?⁶ Although my previous research predisposes

3 See Simon-Shoshan, "Halakhah LeMa'aseh," 147.

4 Daniel Schwartz, "מכהנים בימינו לנוצרים בשמאלם: לפירושו והתפתחותו של סיפור משנאי," *Tarbiz* 74 (2005) 21–41.

5 David Henshke, "היאך קיבל ר' יהושע את סמכותו של רבן גמליאל? על שני סיפורים למעשה אחד," *Tarbiz* 76 (2007) 94. A further reading of the story by Amit Assis, "שני מלכים, כתר אחד, רבית דינו," *Mehqerei Yerushalayim besifrut ivrit* 23 (2009) 53–75 appeared while this article was in press, and I shall include some references to it below.

6 Many studies have dealt with this topic, and recent discussions include: Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition and Culture* (Baltimore and London: John Hopkins Press, 1999) 3–15; Isaiah Gafni, "ארץ ישראל בחקופת המשנה והתלמוד: חקר שנות דור – הישגים ותהיות," *Cathedra* 100 (2001) 215–26; Alon Goshen-Gottstein, *The Sinner and the Amnesiac* (Stanford: Stanford Univ. Press, 2000) 1–20; Harry Fox, "Biography, Stories, Tall Tales: Fishing for Gullibility," *Jewish Studies* 41 (2002) 105–41.

me towards literary readings of rabbinic narrative texts, I do not propose to decide the debate in favor of an exclusively literary approach.⁷ My more modest aim is to grant priority, at least chronologically, to analysis of the final form of the story, a textual reality that cannot be dismissed no matter what kind of approach is adopted. My analysis of the story of Rabbis Joshua and Gamliel will demonstrate how close attention to language and plot can resolve those difficulties in understanding the received text which have led some scholars to unnecessary and unfounded conjectures regarding the original text of the story.

THE STORY AND ITS LITERARY FORM

*MISHNAH ROŠ HAŠŠANAH 2:8–9*⁸

Scene I

- 1 Another time two [witnesses] came and declared: We saw it [the new moon] at its [proper] time,
- 2 but in the evening of the following day⁹ it was not visible;
- 3 and Rabban Gamliel accepted them.
- 4 R. Dosa b. Harkinos said: These are false witnesses!
- 5 How can one testify that a woman has already given birth, yet the next day her belly is between her teeth!?¹⁰
- 6 R. Joshua responded: “I accept [lit. see] your words.”

Scene II

- 7 Rabban Gamliel sent him [a message]: I decree that you come before me with your staff and money on the day that the Day of Atonement falls according to your calculation.

7 Hence I would moderate the declaration by Henshke, “היאך קיבל רבי יהושע,” 98 that “the importance of this discussion is not *in any way* (emphasis added, A.W.) related to factual reality, but only to the way in which the Sages perceived it” (all translations in this article are mine unless otherwise indicated, A.W.). Granting that the main importance of the story lies in the way in which the Sages presented (preferable to Henshke’s “perceived”) it, it is nonetheless possible that the Sages also attached some degree of importance to its factual basis.

8 The translation is based on MS Kaufmann, as transcribed (with minor modifications) by Schwartz, “מכהנים בימים,” 24 (at one point I have departed from Schwartz’s punctuation). Schwartz’s division of the narrative into scenes is correct and instructive, and I have added numeration of lines. Henshke’s article provides an exhaustive consideration of textual variants, but I have not found most of them to be significant for the purposes of this study (compare comment of Schwartz, 24, n. 8, regarding Scene IV), with the exception of those points discussed below. I will identify scene numbers by Roman numerals and line numbers by numbers inside parentheses. Unless otherwise stated, all translations in this article are mine.

9 The Hebrew expression here is בעיבור – which literally means “in its pregnant state.” This term refers metaphorically to the outgoing month as lasting a “swollen” thirty days before the new moon is sighted on the night of the 31st day, rather than “giving birth” to the new moon and the new month on the night of the 30th day. Developing this metaphor will serve R. Dosa b. Harkinos as an effective rhetorical tool for presenting his argument in line 5.

10 Commentators discuss what exactly this image refers to, and see sources in “שיטת העריכה,” 95, n. 43.

Scene III

- 8 R. Akiva went and found him in distress.
- 9 He said to him: I can demonstrate that whatever R. Gamliel has done is done,
- 10 As it says: *These are the set times of the Lord, sacred occasions, which you shall proclaim at their times* (Lev 23:4) –
- 11 Whether at their time or not, I have no set times beside these.

Scene IV

- 12 He came to R. Dosa b. Harkinos.
- 13 He said to him: If we were to call into question R. Gamliel's court,
- 14 we would need to call into question each and every court which stood from Moses' days until now,
- 15 as it says: *Then Moses and Aaron, Nadab and Abihu, and seventy elders of Israel ascended* (Exod 24:9).
- 16 Why were the names of the elders not specified?
- 17 Rather to teach you that any three [men] who stood as a court over Israel are the same as Moses' court.

Scene V

- 18 He took his staff and money and went to Jabneh to R. Gamliel on the date that the Day of Atonement fell according to his calculation.
- 19 Rabban Gamliel stood and kissed his head and said to him: Come in peace, my master and my disciple –
- 20 my master in wisdom, my disciple in that you accepted my words!¹¹

Leading hermeneuticists, such as Schleiermacher and Gadamer, have shown that acquiring “foreknowledge” of a text in its entirety is necessary for providing the background and the context within which the details make sense.¹² Our

In any event, the context makes clear that it is a graphic description of advanced pregnancy.

11 Jacob N. Epstein, מבוואות לספרות התנאים (Jerusalem: Magnes, 1957) 370, doubts the authenticity of lines 19–20, based on their absence in the Pisaro edition and on the discussion in Raphael Nathan Neta Rabinowitz, *Variae Lectiones* (Munich: E. Huber Press, 1872) on this passage. Even if we add to these the few additional witnesses that delete these lines, they would not override the text attested by the majority of witnesses, including those generally regarded as most reliable, and see Henshke, “היאך קיבל ר' יהושע,” 83, n. 23. Simon-Shoshan, “*Halakhah LeMa'aseh*,” 152 argues for the authenticity of lines 19–20 based on the fact that *γ.Roš. Haš. 58b* comments upon them. The reading of the majority of witnesses is further confirmed by literary analysis of the story and of the chapter, as I have demonstrated in my “שיטת העריכה,” 86 n. 16, 88 n. 23.

12 The idea of *Vorverständnis* – prior understanding – is proposed in order to deal with the “hermeneutic circle,” which notes the circularity involved in any interpretation: the details may be understood only in light of the text in its entirety, while the entire text may be understood only by means of comprehending the details of which it is composed. See Friedrich Schleiermacher, *Hermeneutics: The Handwritten Manuscripts*, ed. Heinz Kimmerle (Missoula, Mont.: Scholars

preliminary understanding of the story is based upon the centrality of the main character, R. Joshua, whose reaction to an enigmatic ruling and a draconian decree drives the story's plot. This insight rests on two central features of the story:¹³

1. R. Joshua is the only character who appears in all the scenes of the story, and it is his opinion, actions, and feelings that provide the story's dramatic tension.¹⁴ R. Joshua opposes Rabban Gamliel's decision in Scene I; in Scene II Rabban Gamliel orders him to comply with his decree; he bemoans the draconian decree at the beginning of Scene III; having decided, through soul-searching deliberation (III–IV), to comply with the decree (V), he earns Rabban Gamliel's praise in the story's conclusion (19–20).
2. R. Joshua is the only figure in our story whose character and states of mind concern the narrator. His distress (8) and wisdom (20) are mentioned explicitly, and other parts of the narrative indirectly characterize his internal world by delineating his struggles with the dilemma confronting him. The fact that only after two separate attempts at persuasion by two outstanding Sages was R. Joshua persuaded shows the depth of his ambivalence and his difficulty in deciding the issue.

Below we will discuss other features of the story which also focus the reader's attention upon R. Joshua, but first let us examine the interpretive consequences of our preliminary insight regarding the story's main protagonist. Skillfully the narrator ensures that R. Joshua appears on stage when the reader's empathy towards his halakhic ruling has already been secured by R. Dosa's compelling rhetoric (5). The draconian nature of R. Gamliel's decree (II) assures the reader that R. Joshua's emotional reaction (III) is well justified. The impressive homilies of Rabbis Akiva (III) and Dosa (IV) serve to convince the reader, together with

Press, 1977) and Hans-Georg Gadamer, *Truth and Method* (New York: Seabury Press, 1975).

- 13 This central insight, together with the points from the story which support it, is based on the narrative as it appears in the final version of the Mishnah. At this juncture we will not address arguments regarding significant differences between the current story and its original version. I assume that even those scholars who have questioned the presence in the original version of one detail or another will agree that the scholar's first priority is to attempt to decipher the meaning of the story in its current form (according to the best textual witnesses). Only when warranted by substantial difficulties in understanding the current version and when supported by solid evidence should the scholar resort to reconstructing a hypothetical earlier version.
- 14 See Jonah Fraenkel, דרכי האגדה והמדרש (Givatayim: Yad Lataalmud, 1991) 240–42, regarding the “dramatic”—as opposed to “epic” or “lyrical”—character of the aggadic talmudic narrative, inasmuch as it tends to focus on tensions, clashes, and contradictions inherent in the human condition. Our narrative clearly exemplifies this claim, as will be amply demonstrated in this article. It should be noted that Rabban Gamliel does not appear in all the scenes, but his name is mentioned by other characters in the two scenes (III and IV) in which he is absent. This clearly marks him as the main supporting character of the story.

R. Joshua, that he must accept R. Gamliel's decree. The sensitive reader is likely, however, to sense the paradoxical quality of these homiletical readings which reverse the intuitive understanding of the verses that they interpret. While the verse from Leviticus explicitly states that festivals are to be proclaimed "at their times," R. Akiva ignores this phrase and inverts its meaning in his homily: God authorizes festivals whether proclaimed "at their proper time or not." While the Sages usually depict Moses and his generation as luminaries with no match in later times, R. Dosa's homily pointedly makes the opposite claim, arguing that there is no difference between contemporary courts and that of Moses.

Even though R. Joshua ultimately follows Rabban Gamliel's instructions, the harsh impression engendered by the draconian decree and by the protagonist's inner struggle is never completely erased. The counter-intuitive nature of the homilies guides the reader to accompany R. Joshua's hard journey with mixed emotions. We feel his heavy steps, as he desecrates his own sacred day (18), and we wonder whether R. Joshua finds solace in R. Gamliel's words (20) which conclude the story. This dramatic tale leaves no room for indifference, and with good reason it has been the centerpiece from the Middle Ages until today of discussions regarding the tension between individual autonomy and communal authority.

Armed with the "foreknowledge" which places R. Joshua at the tale's center, we are better able to interpret the rest of the story's many details. The narrative is marked by several underdetermined pronouns (whose vagueness figure prominently in discussions by contemporary scholars), and inasmuch as the narrative focuses on R. Joshua, we can assume by default that for the most part they refer to him: he sent to *him* (7), found *him* (8), he said to *him* (9), *he* took *his* staff and purse (18), kissed *his* head and said to *him* (20).

The story's diction also contributes significantly to focusing attention on R. Joshua's internal world. The following table shows us the linguistic connections between the story's last scene and those which preceded it.

<i>Final scene, Scene V</i>	<i>Preceding scenes</i>
Come in peace	two [witnesses] <i>came</i> (I) <i>come</i> before me (II) He <i>came</i> to R. Dosa (IV)
He took his staff and money	with your staff and money (II)
He <i>went</i> to Jabneh	He <i>went</i> and found (III)
R. Gamliel <i>stood</i>	every court which <i>stood</i> from Moses' days (IV) who <i>stood</i> over Israel (IV)

Final scene, Scene V Preceding scenes

you *accepted* my words Rabban Gamliel *accepted* them (I)

You accepted my *words* I see your *words* (I)

The concluding scene is connected to the opening one through the use of *accepted* (קבל) and *words* (דבר) in both. It is connected to Scene II through the use of *come* (בוא) and *staff* (מקל); to Scene III by the word *went* (הלך); and to Scene IV with *come* (בוא) and *stood* (עמד).¹⁵ All the plot's threads are woven together in the final scene where the deliberations and tensions of the previous scenes are resolved. The literary role of some of these word-parallels is clear. The return in the penultimate scene of *staff and money* – symbolic of mundane weekday activity – represent the complete desecration of R. Joshua's own holy day and his full submission to R. Gamliel's decree.

The recurrence of *accepted* and *words* (first found in Scene I) in the concluding scene highlights the paradoxical nature of R. Gamliel's authority. At the conclusion of the story R. Joshua surrenders his assent to R. Dosa's *words*, which in Scene I he had "seen" logically, in order to *accept* by fiat R. Gamliel's *words*. On the other hand, however, the story makes clear that R. Gamliel's *acceptance* of

15 It should be noted that most of the words connecting Scene V to the other scenes are common terms appearing frequently in mishnaic Hebrew, and one should be circumspect about grounding a system of verbal links in words that appear frequently. However, the literary value of linguistic associations is not measured by scarcity alone; verbal links draw their power from the way in which expectations engendered by the text regarding words or details that should appear are confirmed or thwarted by the actual language employed and from the ways in which the actual words and expected words interact. The literary significance of repeated words or wordplays may be determined, among other factors, by the location and function of the words, as well as the interpreter's preliminary intuition regarding the central motifs of the narrative. In our story the narrator deploys standard words in a sophisticated manner in order to produce subtle, but highly ramified, interactions among the different sections of the story. For example: "come in peace" in the final scene undoubtedly represents the fulfillment of the decree "come before me" (II). The reader, expecting the fulfillment of the decree to follow the decree, will sense some discomfort when the verb *come* is replaced by *went* in Scene III; hence, when the long-awaited verb *come* appears in Scene IV, the reader is again surprised that it brings R. Joshua to R. Dosa instead of before R. Gamliel. These verbal associations may be understood in light of the preliminary insight that R. Joshua's deliberations are the heart of the story, and in turn the verbal links reconfirm the validity of the preliminary insight (thus, the hermeneutic circle). In this context it is interesting to note that both Schwartz and Henshke have noticed the surprising usages in our story of the verbs *come* and *go*, and indeed the inconsistent use of these verbs in Scenes III and IV is one of their main reasons for proposing radical revisions in the text and interpretation of the narrative. In my opinion, rather than inconsistency, the use of these verbs in our narrative displays literary sophistication.

the witnesses at the beginning of the story is legitimated only through R. Joshua's own *acceptance* of R. Gamliel's authority as head of the court. R. Gamliel himself is aware of this tension, praising R. Joshua for *accepting* his authority despite his being "my Rabbi in wisdom." Our story is designed not to erase the tensions inherent in this conflict, but rather to rise above them. While R. Joshua's ambivalence is settled on the practical level, the intellectual and ethical tensions in which it was rooted remain unresolved. The remaining verbal repetitions and wordplays also contribute to shaping the story's message.

THE USES OF COME AND GO

Tracking the various uses of *come* in the story highlights R. Joshua's irresolution. Ordered by R. Gamliel to "*come* before me," he indeed *comes* – but before R. Dosa, R. Gamliel's disputant, and only after hearing the words of R. Akiva. It is true that after hearing R. Dosa's homily¹⁶ he does "*come* before" R. Gamliel (Scene V), but here as well the narrator delays the employment of this verb. Rather than stating that R. Joshua "*came* before" R. Gamliel, the narrator recounts that he "took in hand his staff and money and *went* to Jabneh," deferring the appearance of the key verb to R. Gamliel's concluding words of welcome – "*Come* in peace, my master and my disciple." The deployment of *went* in line 18, not only delays the appearance of *came*, but also serves a literary purpose of its own. As opposed to focusing attention on arrival at the destination, by using the word *came*, the term *went* focuses on the process, the journey itself.¹⁷ The verb refers directly to the expenditure of physical energy on this journey, but presumably the main connotation intended by the narrator is the mental and emotional effort involved in accomplishing the journey.

Subsequent appearances of both *come* and *went* heighten their literary impact. Line 8 uses *went*, even though here we would expect the formula: "R. Akiva *came* and found him in distress," parallel to the similar sentence: "He *came* to R. Dosa b. Harkinos" (12). Preferring the term *went* in line 8 to the more common *came* may be explained on two levels. In the immediate context, the use of *found* in line 8 requires the companion verb *went* – nowhere in the talmudic literature are *came* and *found* combined in a single expression, as opposed to the frequent occurrence of "*went* . . . and *found*." In rabbinic literature, *coming* to someone suggests an arrival with a preordained goal, such as performing a

16 This is the best reading of Scene IV, identifying R. Dosa as the homilist, as generations of commentators have done, as opposed to Schwartz's and Henshke's reading, in which R. Joshua is the homilist. Their understanding will be discussed below.

17 The effect is heightened by the addition of the destination of the journey, Jabneh (18), omitted from the wording of the decree (6). Adding the name of the destination informs the reader that R. Joshua is called upon to embark upon a lengthy journey, from one city to another.

specific action or posing a question to a Sage regarding a thorny point of law.¹⁸ *Going and finding*, however, describes an act of discovery, often unanticipated. Sometimes the discovery is the object of the journey, while in other cases the discovery is unrelated to the original purpose of the journey.¹⁹

In our case, we may eliminate the first option, for it is clear R. Akiva had no reason to search for R. Joshua, nor did he wish to distress him. Several options remain regarding R. Akiva's purpose in *going*,²⁰ but, it seems that our narrator is less concerned with R. Akiva's original intentions than with his discovery upon arrival. R. Akiva discovers R. Joshua's distress, causing him to abandon his original intentions and to assume a new mission — presenting the homily of Scene III. Had the narrator stated that R. Akiva “*came* to R. Joshua,” the implication would be that R. Akiva's visit was motivated by his desire to persuade his teacher by means of his homily, and the mental state of R. Joshua would play no role in this scene. Only by using the term *went and found* can the narrator underscore the crucial significance of R. Joshua's feelings, which occasion one of the story's turning points. The purpose of R. Akiva's homily was not so much to convince R. Joshua, as to calm his troubled spirit. The talmudic *baraitot* present R. Akiva's purpose in a similar light, recording R. Joshua's response to the homily: “You have comforted me, Akiva” (*y.Roš Haš. 2:9, 58b*; compare *b.Roš Haš. 25a*).

- 18 Examples of the first usage include: “He comes to Ahiyah . . . and gives him a seal” (*m.Šeqal. 5:4*); “He came to his bullock . . . and leaned his two hands upon him and confessed” (*m.Yoma 3:8*). Examples of the second usage include: “R. Jose said: R. Yoḥanan came to R. Ḥalafta and said to him (a certain question) . . . He said to him (a response) . . . He said to him: I also would say so, but Akiva said . . .” (*t.Maʿaš.Š. 1:13*). Similar usages appear in *t.B.Bat. 2:10*, *t.Kelim, t.B.Meš. 1:5*, *t.ʿAhil. 5:8*. Henshke, “היאך קיבל ר' יהושע,” 85 supports his claim that the one who “went and found” in Scene III is R. Gamliel's emissary (Scene II) by citing the replacement of *come* with *go*. My explanation of the difference between the connotations of the two words undercuts this argument.
- 19 Examples of the first possibility: “If they said to someone: Go out and seek and slaughter on our behalf, and he went and found and slaughtered” (*m.Pesah. 9:9*); “Once someone stood at the top of a mountain and said: So-and-so the son of so-and-so has been bitten by a serpent and is dying. They went and found him with his face bloated” (*t.Yebam. 14:7*); “. . . and a lizard bit him and he did not interrupt. His disciples went and found him dead at the opening of his hole” (*t.Ber. 3:20*). An example of the second possibility: “Said R. L'azar: When I went to 'Ardasqim I found R. Meir and R. Judah ben Beteira the Chief, who were sitting and discussing a point of law” (*t.Naz. 5:1*).
- 20 According to *y.Roš. Haš. 28b*, R. Akiva is the emissary of Scene II, and further on I will discuss the basis in the *mishnah's* language for this understanding as well as the question that it evokes: how is it that “R. Akiva found him in distress” even before he had a chance to inform him of the decree? However, it is possible to understand R. Akiva's visit in a different manner altogether, namely that this was a disciple's routine visit with his master or perhaps that R. Akiva wished to ascertain how R. Joshua had reacted to the dramatic events of Scenes I and II. These possibilities are based, of course, on the story as it currently appears; later on I will discuss the doubts raised by Epstein and Henshke regarding the role of R. Akiva in the original version of the story.

Both occurrences of *went*, in lines 8 and 18, rather than the expected verb *come*, combine to suggest a single idea. In each instance, the surprising use of *went* reveals R. Joshua's internal world to the reader. In Scene III, R. Akiva's *going* is connected with R. Akiva's discovery of R. Joshua's inner turmoil and his desire to assuage this state of mind. In Scene V, the verb *went* signals that R. Joshua, despite his decision to comply with R. Gamliel's edict, does so with a troubled heart. The repetition of *went* may convey a further point, namely that R. Akiva's *going* paves the way for R. Joshua's *going*. R. Joshua's consultation with R. Dosa in Scene IV might be read as an indication that the former was not convinced by R. Akiva's argument; however, the repetition of *went* indicates that R. Akiva's journey did in fact set the stage for R. Joshua's journey. In other words, R. Joshua did not reject R. Akiva's argument, and R. Dosa's teaching comes to complement R. Akiva's homily and not to replace it. We will expand on this point below.

The word *come* connects the decree in Scene II with its fulfillment in Scene V. However, as noted above, in the final scene of capitulation, it appears only as part of R. Gamliel's greeting and not as part of the narration in line 18. The narrative voice uses the word *went*, reminding the reader of R. Joshua's still troubled state of mind. However, R. Gamliel greets R. Joshua with *come*, underscoring his sense that his decree has been completely obeyed (at least in practical terms). The recurrence of the word *come* in the Patriarch's greeting also reveals a significant shift in the attitude of this important secondary character. Whereas R. Gamliel's original order to "*come* before me" (7) exhibits his authoritarian desire to impose his will on R. Joshua, his closing line, "*come* in peace" (20) manifests his aim of assuaging his subordinate's feelings. This theme finds expression in the previous line as well, where he greets R. Joshua with a kiss on his head. R. Joshua *went* with an inner conflict not fully resolved, but R. Gamliel's describing him as *coming* expresses a desire to put the past behind them and to bring the episode to a harmonious conclusion.

There is one further appearance of the word *come* in the story's opening line, describing the arrival of the witnesses. We will discuss its meaning below, after investigating the connection between the roles in the story of the witnesses and of R. Joshua, as indicated by another verbal echo.

I SEE YOUR WORDS — YOU ACCEPTED MY WORDS

This wordplay reflects R. Joshua's change of heart, the centerpiece of the story. The dispute between R. Joshua and R. Gamliel, which erupts when the former *sees* the words of R. Dosa, ends when R. Joshua *accepts* R. Gamliel's *words*. This change reflects R. Joshua's decision to accept authority rather than to follow his own intellect and understanding. This inversion is reinforced by the para-

dox embedded in R. Gamliel's concluding remark: "my Rabbi in wisdom, my disciple in that you accepted my words." This formulation acknowledges that R. Joshua has not revised his opinion regarding the correctness (= wisdom) of R. Gamliel's ruling, but has only yielded to (= accepted) R. Gamliel's authority.

THE ROLE OF ACCEPTED AND STOOD

The Mishnah juxtaposes to our narrative an additional story in which problematic witnesses are *accepted* by R. Gamliel. In both narratives R. Gamliel's ruling is highly counter-intuitive and is issued without explanation, ignoring cogent arguments advanced by other judges. *Accepting* the witnesses in both stories thus represents the absolute authority wielded by R. Gamliel. At the conclusion of the second episode (our story) the word *accepted* appears in a different context and conveys a different meaning. R. Gamliel's statement "you *accepted* my words" indicates that R. Gamliel's authority is not self-evident, but rather hinges upon its *acceptance* by the community, represented in our case by one of its leaders. The occurrence of *accept* in the first and last scenes of the story thus forms an *inclusio* indicating the symbiotic relationship between the authority wielded, however arbitrarily, by the Patriarch and the uncoerced decision by a fellow judge to *accept* this authority. The very fact that R. Joshua deliberates whether or not to *accept* R. Gamliel's decree demonstrates that authority hinges on those who are governed no less than upon their leaders. R. Gamliel's awareness of the tenuous nature of his authority is reflected in his draconian decree, rooted in the realization that rejection of his authority by his fellow Rabbis poses a serious threat to his leadership.

The story is bracketed by an additional verb as well – *come*. Here too there is a profound difference between the ramifications of the two *comings*, by the witnesses in line 1 who *came* to testify and by R. Joshua in line 19, who is greeted with R. Gamliel's invitation to "*come* in peace." These very different arrivals represent two paradoxical modes of interaction between court and community. The court, while apparently reliant upon the community to *come* forward with information regarding the new moon, manifests under R. Gamliel's leadership a surprising degree of independence, sanctifying the new moon even when the testimony appears quite shaky. No less paradoxically, the arrival of R. Joshua, while indicating submission to R. Gamliel's authority, intimates on another level the contingency of all authority upon its autonomous acceptance by the community.

The drama surrounding R. Gamliel's authority is illuminated from another angle by the wordplay on *stood*. In Scene IV it represents the authority of the rabbinic court: "every court which has *stood* over Israel" (14, 17). In Scene V, however, it is the authority who heads the court who *stands* up in tribute to

a subordinate who now recognizes its authority (19).²¹ R. Gamliel's *standing* also influences the reader's evaluation of his character, offsetting the stern authoritarian image of Scene II, as well as balancing his earlier degradation of R. Joshua with a sign of respect normally accorded by a disciple to his master. The respect expressed by *standing* is reinforced by R. Gamliel's words: "my master and my disciple."

The play on the word *stood*, like the the one on *accepted*, reveals the circular nature of authority. Inasmuch as R. Gamliel's authority is ultimately contingent upon its *acceptance* by R. Joshua, it is appropriate for him to confer honor upon the subordinate who has confirmed his position. Standing before R. Joshua is politically astute, in order to assure his continuing as leader, in the spirit of: *If you will be a servant to those people today and serve them, and if you respond to them with kind words, they will be your servants always* (1 Kgs 12:7).

R. Dosa's homily further illustrates the central role of *standing* in providing authority. At first blush it is not clear how this homily clears up R. Joshua's doubts. He could very well conclude that just as R. Gamliel could be equated with the anonymous elders of Moses' court, so could he, R. Joshua himself, be accorded equivalent authority. The answer to this question is rooted in the phrase: "every court which has *stood over Israel*," meaning that its authority has been recognized and accepted by the community. All the characters in our story share the assumption that R. Gamliel's court enjoyed such recognition. R. Dosa's homily persuades R. Joshua that the authority recognized by the people is also accorded authority by the Torah. This authority is equivalent to that of Moses' own court, and it supersedes that of Sages whose halakhic acumen may exceed that of the court's head. It is R. Gamliel's *standing over* the people that grants his decisions their authority. It is his *standing before* R. Joshua which, beyond proper etiquette, shows his understanding of the dialectical nature of his authoritative *standing over* the Jewish nation.²²

These two key words, then, *accepted* and *stood*, give clear literary expression

21 The word *stand* also plays a key role in *m.Roš. Haš.* 3:1, and see my discussion in "שיטת העריכה," 271 and n. 55.

22 It is difficult, therefore, to accept the claim advanced by David Goodblatt, *The Monarchic Principle* (Tübingen: J. C. B. Mohr, 1994) 204, and Catherine Hezser, *The Social Structure of the Rabbinic Movement in Rabbinic Palestine* (Tübingen: Mohr Siebeck, 1997) 379, "that Gamaliel headed a duly constituted court, the likes of which abound in the history of Israel." Goodblatt and Hezser correctly observe that R. Joshua obeys due not to compulsion but rather to an autonomous and voluntary decision. However, this does not attest any lack of authority on the part of R. Gamliel, but rather demonstrates the dialectical nature of authority per se. For a thorough critique of Goodblatt's approach, see Haim Shapiro, "סמכויות ותפקידים," *מעמד, מדרגה, ביבנה*: in Ya'akov Ḥabba and Amiḥai Radzyner, eds., *עיונים במשפט העברי ובהלכה* (Ramat-Gan: Bar-Ilan Univ. Press, 2007) 305–34. Assis, "שני מלכים, כתר אחד," 67, argues that the story demonstrates Rabban Gamliel's lack of "mythic justification" and his consequent need to rely on acceptance by other Rabbis. I believe that there is some justice in this reading; compare my remarks in "שיטת העריכה,"

to the closure afforded by the concluding scene. The *acceptance* by R. Joshua at the conclusion of the tale legitimates the prior *acceptance* of the witnesses by R. Gamliel at its opening. R. Gamliel's *standing* to honor R. Joshua balances his earlier harshly authoritarian manner, while reflecting a dialectical nature of the court's authority. R. Gamliel's empathetic gesture in the story's concluding lines casts his character in a better light, qualifying him as a worthy leader and legitimates (post-facto) R. Joshua's decision to affirm his authority as head of the court.²³

This scene of reconciliation produces the story's closure, against the backdrop of the dramatic development of the main characters in the preceding scenes. The most dramatic change, of course, is undergone by R. Gamliel, whose empathetic attitude in the closing scene differs sharply from the stern inflexible authority displayed in the opening scenes. The story's two main characters – with the help of two supporting characters – both shrewdly guide themselves towards a shared understanding that grants authority on the practical level, while maintaining the value of adherence to truth on the theoretical plane.²⁴ Both on the personal and on the ideational level, the story concludes with a reconciliation that involves deciding in favor of the one without eliminating the other. The paradoxical sentence with which the story ends, “my master in wisdom, my disciple in that you accepted my words,” expresses (among other things) the tension between the pluralism of the realm of ideas and the uniformity required in the realm of practice.

96–99, “הגאוגרפיה בקידוש החורש,” 256–57. Nevertheless, in my opinion, while the historical constellation reflected in our narrative highlights the dialectical nature of authority, this aspect of authority applies to more authoritarian (“mythic”) models as well.

- 23 The importance of the motif of standing in our story emerges as well – somewhat paradoxically – from the story of Rabban Gamliel's deposition in *b.Ber.* 27b–28a, where the motif of standing also plays a significant role, albeit in the opposite direction: R. Gamliel compels R. Joshua to stand on his feet until the community ordered Ḥuṣpit the expositor: “Stop (lit., stand)!” It bears noting that there are additional literary connections between that narrative and our narrative, such as the use there of the theme of “distress”: “Until when will he continue to distress him?,” “You are unaware of the distress of Sages,” and compare the parallel in *y.Ber.* 4:1, 7b–7c. According to the standard version of *b.Ber.*, the narrative there refers explicitly to our story: “On the New Year last year he distressed him,” but see Henshke, “היאך קיבל ר' יהושע,” 87 n. 39 regarding the reliability of this reading. Regarding the relationship between our narrative and the story of R. Gamliel's deposition see further Devorah Steinmetz, “Agada Unbound: Inter-Agadic Characterization of Sages in the Bavli and Implications for Reading Agada” in Jeffrey L. Rubenstein, ed., *Creation and Composition* (Tübingen: Mohr Siebeck, 2005) 314 n. 41 and 320–21 n. 60.
- 24 Simon-Shoshan, “*Halakhah LeMa'aseh*,” 151 notes the conceptual tension at the conclusion of the story between wisdom and authority, but he argues that the story presents Rabban Gamliel “in an unflattering light” (compare Assis, “שני מלכים, כתר אחד,” 66). Elsewhere (152) he intimates that the narrative's conclusion somewhat balances the negative portrayal of R. Gamliel. In my opinion, Simon-Shoshan exaggerates the criticism of R. Gamliel which emerges from Scenes I and II and he underestimates the power of the positive impression created by the closing sen-

PLOT ANALYSIS — THE QUESTIONS

Up until this point, our interpretive method has been based on an overall view of the story's structure, themes, and interplay of keywords. In this section, we will see how detailed analysis of plot and of precision of language support a reading which focuses upon the personal and ideological drama described above.

Our story, like many other talmudic narratives, avoids direct statements regarding the motivations underlying the behavior of its main characters. The author clearly differentiates in this regard between the two main protagonists, R. Gamliel and R. Joshua, and the two supporting characters. The motives of both supporting characters, are presented explicitly: "How can one testify that a woman has already given birth, yet the next day that she is still pregnant?"; "*These are the set times of the Lord . . .* (Lev 23:4) – whether at their proper time or not . . ."; "If we were to call into question R. Gamliel's court. . ."²⁵ By contrast, the motives underlying the actions of the main characters remain hidden from view. This section will examine a number of questions regarding the actions of Rabbis Gamliel and Joshua:

1. What is the justification for R. Gamliel's acceptance of witnesses whose testimony was self-contradictory, given the impossibility that a new moon be visible on the 30th but disappear the following evening?
2. Why did R. Gamliel take umbrage when another Sage voiced an opposing view? Is there no room for debate among rabbinic judges?
3. Why did he direct his decree specifically against R. Joshua, who merely subscribed to the position advocated by R. Gamliel's main adversary, R. Dosa b. Harkinos?
4. R. Gamliel's draconian decree appears unjustifiably harsh. Reasonably R. Gamliel might demand some public display of submission, but this

tence. The aim of our narrator to present a balanced portrayal of R. Gamliel comes into bold relief when viewed against the backdrop of the clearly negative portrayal of R. Gamliel in *b. Ber.* 27b–28a, which highlights its criticism by means of narrative details, including: R. Joshua's view is presented in private conversation and it pertains to a relatively low-profile halakhic matter; compelling R. Joshua to stand on his feet is an extraordinarily humiliating penalty. Henshke, "הַיָּחַד הַרִשִׁיעַ",⁹⁶ downplays the tension between "wisdom" and "authority" in the Mishnah – as opposed to the sharp opposition between them that emerges from the *baraita* cited in the Talmuds – but in my view he exaggerates the difference between these two sources. This is true as well of other comparisons Henshke draws between the *mishnah* and its parallel *baraita*, and some of these will be examined further on.

²⁵ The behavior of R. Akiva is actually less clear than appears on the surface. The background and motivation of his visiting R. Joshua is unclear from the story, as explained above, and R. Akiva also doesn't make entirely clear how his reading of the verse leads to the conclusion that "whether at their time or not I have no set times besides these." I will return to this point later.

could have been achieved by having R. Joshua publicly celebrate R. Gamliel's Day of Atonement, allowing him to observe his own day in private on the following day. Why does R. Gamliel insist upon public desecration of R. Joshua's Day of Atonement, a demand which distressed R. Joshua greatly and may well have made it more difficult for him to submit to the decree?

5. Why was R. Joshua persuaded only after two separate discussions and two different homilies by two different Sages? His silence after R. Akiva's homily indicates assent,²⁶ especially inasmuch as rabbinic literature records other uncontested homilies which argue the same point.²⁷ Why, then, did R. Joshua feel the need to hear R. Dosa's homily before arriving at his decision?

We will seek answers to these questions based primarily on the details of the narrative and its textual nuances.

THE REASONING BEHIND R. GAMLIEL'S LEGAL DECISION

It is difficult to answer the first question based only on the information contained in the narrative. Schwartz argued that R. Gamliel subscribed to a "nominalistic" approach to *halakhah*, according to which the law need not correspond to natural reality, as opposed to the legal "realism" of Rabbis Dosa and Joshua, which requires that the law be determined in accordance with the real world.²⁸ To my mind it is doubtful whether we can draw a clear line of differentiation between "nominalistic" and "realistic" approaches in halakhic disputes from the Second Temple and rabbinic periods. While different views may tend more in one direction or the other, they don't divide neatly into two overarching and consistent schools of thought. In the endeavor of human society to project its categories of thought upon the world it is impossible to completely divorce oneself

26 Steinmetz, "Agada Unbound," 314 n. 41, proposes an interesting connection between R. Akiva's argument in our *mishnah* and R. Joshua's argument in the Oven of Akhna'i narrative ("it is not in heaven"), and Henshke, "היאך קיבל ר' יהושע," 89–90 adduced this similarity as support for his claim that R. Joshua is the homilist in Scene III. I see a distinction between these arguments, and Henshke also qualifies his observation somewhat, but I cannot elaborate on this point here.

27 See *t.Roš. Haš. 1:11, 2:1; Sifra Emor*, Chap. 10, 2–3 (Weiss ed., 100a); *b.Roš. Haš. 25a*. According to Louis Finkelstein, ספרא דברי 17 (4 vols.; New York: Jewish Theological Seminary of America, 1989) 2:126, the *baraita* in the *Sifra* is ancient and was known to R. Joshua, but I have found no basis for this claim. Regarding the differing nuances of the different homilies, see my, "שיטת העריכה," 102 n. 72, and Henshke, "היאך קיבל ר' יהושע," 95.

28 See Schwartz, "מכהנים בימים," 31–33. Conceiving the controversy in our *mishnah* as an expression of the dispute between priestly "realism" and rabbinic "nominalism" is part of Schwartz's broader conception regarding these two schools of thought, which he has presented in several publications. He has summarized his approach and reactions to it in his article, "טיעוני קל וחומר בראיזם," *Massekhet* 5 (2006) 145–48.

from the real world, and it is likewise impossible to expect full conformity between the categories and reality. Hence even “nominalists” must take the real world into account and even “realists” will utilize procedural and formal considerations.²⁹ Full support of this claim is beyond the purview of this paper,³⁰ but even if we were fully to accept Schwartz’s views concerning the two schools of halakhic thought, they would still not provide adequate explanation of R. Gamliel’s halakhic ruling. Nominalism, whether viewed as a full-blown self-sufficient approach or merely as an inclination, *enables* its adherents to contravene external reality, but it does not require doing so and does not in itself provide a motive for doing so in a particular case. Hence, our question remains unsolved: what was R. Gamliel’s motivation to accept patently false testimony?

One possibility is that R. Gamliel believed these witnesses because – unlike all other types of testimony found in the Torah – the facts concerning the new moon’s appearance are already known to the court due to its astronomical calculations.³¹ It is possible, therefore, that the dispute between R. Gamliel and Rabbis Dosa and Joshua concerns the need to follow the usual evidentiary rules for evaluating testimony.³² In R. Gamliel’s view, insofar as the court already knew whether, when, and how the new moon was due to appear, it need not be perturbed by internal or external contradictions in witnesses’ testimony. Rabbis Dosa and Joshua, however, reasoned that requiring eyewitnesses in order to sanctify the new moon implies the need of testimony which fits the usual

29 Scholars have noted that Schwartz’s thesis presents an overly schematic division. See: Jeffrey L. Rubenstein, “Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment,” *Dead Sea Discoveries* 6 (1999) 157–83; Walfish, “שיטת העריכה,” 310 n. 160; Yoel bin-Nun, “בקשת האמת,” *מול פורמליזם הלכתי*, in Amihai Barhōl, ed., דרך ארץ, דת, ומדינה (Jerusalem: Publication Department of Israeli Ministry of Education, 2002) 195–96.

30 As we shall see below, the controversy between R. Gamliel and R. Dosa may be explained in different ways, some of which are connected to some extent to the clash between “nominalism” and “realism” and some of which have nothing to do with these concepts (see below, nn. 33 and 37).

31 This most probably is the reason why *m.Roš. Haš.* 2:6, which describes the examination of the witnesses in terms closely resembling those of *m.Sanh.* 3:6, describing the examination of witnesses in monetary cases, omits one stage of the examination – the admonition of the witnesses. This explanation was suggested by י קור להח”ז to *m.Roš. Haš.* 6, and see my discussion in “שיטת העריכה,” 90–91, n. 28. See there as well for discussion as to whether the charts used by R. Gamliel in *m.Roš. Haš.* 8 were designed to check whether the witnesses’ testimony corresponded to the facts already known to the court.

32 This explanation emerges from the discussion in Maimonides, פירוש המשנה, trans. Yosef Qafih (Jerusalem: Mosad Harav Kook, 1964) 211: “and rightly did [R. Gamliel] believe them, because they testified about sighting at the time of sighting” (my translation, A.W.). The discrepancy between the astronomical calculation and the problematic testimony, as well as the greater reliability accorded to the former, may be explained by assuming that on the second night the witnesses may not have had clear visibility due to atmospheric conditions (see Maimonides, פירוש המשנה, compare *b.Ber.* 27b) or that “perhaps their vision was weakened.”

evidentiary criteria, rejecting testimony riddled by contradictions, even when substantiated by astronomical knowledge.³³

However, the language of the *mishnah* may support another way of explaining the dispute, hinging upon proper understanding of line 2: “but in the evening of the following day it was not visible (לֹא נִרְאָה).” The question is: to whom was it not visible? Since the witnesses need to arrive at the court on the thirtieth day of the concluding month – that is, before the “following day” (= the thirty-first day), the simple reading of the *mishnah* would seem to follow Rashi’s interpretation, according to which only the words, “We saw it [the new moon] at its [proper] time,” were spoken by the witnesses. The rest of the sentence, “but in the evening of the following day it was not visible,” is spoken by the narrator of the story, meaning that the moon was not seen by the judges. Rashi: “The court and the people anticipated that it [the moon] would be visible . . . it was not seen by them.”³⁴

This reading may be supported by close attention to the *mishnah*’s language. Whereas in line 1 the witnesses employ the verb “saw” in active mode – “We saw it” – in line 2 the same verb appears in the passive form: “it was not visible.”³⁵ This shift is readily explained on Rashi’s reading, according to which line 1 quotes the witnesses’ testimony as to what they saw, whereas line 2 is the voice of the narrator describing an objective situation in which “it was not visible” at all.³⁶ R. Gamliel’s ruling under these circumstances may be explained in a

33 Or a bit differently: perhaps R. Gamliel requires the testimony for sanctifying the new moon to conform to usual evidentiary criteria, but he relies here on a general principle in the rules of evidence that “a person does not pay attention to matters for which he is not responsible” (see R. Zerahiyah Halevi, *המאור הקטן* ע”ב, *המאור הקטן*). See further Walfish, “שיטת העריכה,” 92–93 n. 34. According to the ways of understanding R. Gamliel proposed thus far, his dispute with R. Dosa has nothing to do with the clash between “realism” and “nominalism,” because the question at issue is how the court weighs different considerations in attempting to establish what the reality was.

34 Rashi to *b.Roṣ Haš.* 25a, to the text *ליל שלשים*; compare: *ליל שלשים* to *b.Roṣ Haš.* 25a, to the text *ליל שלשים*; Mishnah commentators *שלמה*, *קול הדוד*, *בית דוד*, and *תפארת ישראל*; Louis Finkelstein, *Akiba: Scholar, Saint, and Martyr* (New York: Atheneum Press, 1964) 119. An opposing position, that line 2 was said by the witnesses, is held by Maimonides, Ovadiah of Bertinoro, *לחם ששים*, and (apparently) *המאור הקטן*. See further: Eduard Baneth, *Mischnejot Mo’ed* (Basel: Victor Goldschmidt Verlag, 1968³) 398; Walfish, “שיטת העריכה,” 91–93 (and footnotes). Maimonides’ position would seem to be difficult because it is unclear how witnesses who come to sanctify the new moon – presumably on the thirtieth day – could possibly testify about the absence of the moon on the thirty-first night. Maimonides solves this difficulty by positing that witnesses can come after the thirtieth day in order to sanctify the new moon retroactively – see *Mishneh Torah*, *Laws of Sanctifying the New Moon*, 3:15–16. However, it is difficult to reconcile this ruling with *m.Roṣ. Haš.* 3:1 and with the conclusion of 1:9; see my “שיטת העריכה,” 91–93 nn. 31–32.

35 This is the text of nearly all witnesses, with the exception of R. Jonathan of Lunel, who reads *ראינו* (we saw) and R. Menaḥem ha-Meiri, who reads *ראינוהו* (we saw it).

36 I have explained in *שיטת העריכה*, 92 n. 31, how the *mishnah*’s language may be explained according

simple and persuasive fashion: in his view the court ought not to invalidate a previously issued and undisputed ruling in light of *ex post facto* evidence which appeared to the court on the following night.³⁷ Rabbis Dosa and Joshua, however, argued against stubborn adherence to a prior decision when it is contradicted by clearly visible facts. R. Gamliel dismissed their concerns, refusing to overturn an already accepted ruling, especially after the new month and the New Year had already been consecrated and celebrated!³⁸

Both of the explanations rest upon a similar assumption: the Sages differed over the measure of authority to grant the court vis-à-vis the witnesses – whether at the outset (the first explanation) or after the fact (the second explanation). While R. Gamliel sought to expand the court's authority to validate a ruling based on presumptively false witnesses, his opponents disagreed that the court had such wide-ranging power. Whatever the exact understanding of R. Gamliel's position might be, the narrative rhetoric biases the reader in favor of R. Gamliel's opponents. In no place does the author even hint at the possibility that R. Gamliel's position is defensible, and instead creates the definite impression that R. Gamliel's position is unreasonable. R. Dosa's biting rhetorical analogy is left unanswered, and even R. Akiva's assertion that "whatever R. Gamliel has done is done" indicates – here as well as elsewhere – that a prior ruling should be maintained despite the fact that the initial ruling was incorrect.³⁹ Apparently the author intentionally biases the narrative in favor of the ruling by Rabbis Dosa and R. Joshua in order to heighten the inner struggle of the tale's

to Maimonides' reading, but I also explained why Rashi's reading makes better sense of the text. A further linguistic point may also be adduced in support of Rashi's reading, based on R. Dosa's language, which attaches the letter ש, meaning "that," only to the word שילדה (that she gave birth) and not to the clause, "the next day her belly is between her teeth." The omission of "that" from this clause would appear to indicate that it was not spoken by the witnesses, but rather refers to a fact known to the judges. On the other hand, as pointed out by Baneth, *Mishnajot Mo'ed*, it is difficult to reconcile Rashi's reading with the order of events: "but in the evening of the following day it was not visible" (that is, the night of the thirty-first day) and afterwards "and Rabban Gamliel accepted them" (that is, on the thirtieth day). However, R. Avraham Herşel, שפתי חכמים, טפתי חכמים (Tel Aviv: Shiloh Press, 1976) 38b, to the text רבן לא נראה וקבלן רבן גמליאל (that she gave birth), has suggested a resolution of this problem. Baneth, *Mishnajot Mo'ed* 397–98 is correct in his assertion that both explanations of the *mishnah* encounter difficulties, but unlike Baneth, I believe that Rashi's reading resolves the difficulties in a more convincing manner.

37 According to this understanding, there is some degree of "nominalism" in R. Gamliel's position, but only in a limited fashion: at the outset one should rule only in accordance with the reality as it appears from available data at that moment; however, after a ruling has already been issued, it should not be annulled even if it becomes clear that it stands completely at odds with reality.

38 Compare Finkelstein's language in *Akiba* 119, that Rabban Gamliel "refused to reopen the case."

39 This is the meaning of a similar formulation in *m. Bekh.* 4:4 (my thanks to Hovav Yehieli for pointing this out to me). In similar fashion this expression refers in several places in the Mishnah and the Tosefta to cases in which improper acts are accorded legal validity, for example: *m. B. Bat.* 8:5, *t. Ter.* 4:10.

protagonist, who must choose between authority and what appears to be a patently wrong position.⁴⁰ Our analysis of how R. Gamliel's position may be explained, together with the author's silence regarding this point, reinforces our reading of the story as focusing on the confrontation between authority and truth and on R. Joshua's wrenching struggle with this issue.

THE OBJECT OF THE DECREE

The central motif of the story suggests a line of thought which will enable us to resolve both questions two and three: the reason that R. Gamliel reacted so negatively to an opposing view and that he directed his decree solely at R. Joshua. R. Gamliel perceived R. Joshua's position not just as a halakhic dispute, but rather as an affront to his authority. R. Gamliel makes this point clear in the story's concluding line, referring to "my disciple in that you accepted my words." R. Gamliel's view of R. Joshua's statement is not the product of hypersensitivity or of an overly authoritarian approach.⁴¹ The centrality of the calendar to national solidarity emerges clearly from Second Temple sources and from even a cursory reading of the first two chapters of *m.Roš Haššanah*. Consequently, a dispute regarding the sanctification of the new moon may readily be seen as endangering the social cohesiveness of the nation. It stands to reason that all the characters in our narrative realized that challenging the court's decision regarding the new month represented a challenge to the court's authority on a matter of cardinal importance in the public-national arena.

However, the question remains as to why R. Gamliel discerned this threat only from the direction of R. Joshua and not from R. Dosa? Most of the answers offered in the literature focus on differences in status between these two Rabbis. Whereas R. Joshua was one of the key figures in the court at Jabneh, R. Dosa

40 The one-sided rhetoric of the story has led some scholars to one-sided interpretations, including Finkelstein, *Akiba*, 119, who claims that R. Gamliel "would not admit error" and Simon-Shoshan, "*Halakhah LeMa'aseh*," 151, who asserts that "from an intellectual point of view Rabban Gamliel was simply wrong." However, we should not allow rhetoric designed to underscore the difficulty of R. Joshua's decision to mislead us into thinking the narrator unaware that R. Gamliel does indeed have a basis for his ruling. Compare Assis, "שני מלכים, כתר אחד," 66.

41 The overall favorable portrayal of R. Gamliel here differs significantly from the way he is portrayed in the versions of the story of his deposition in the fourth chapter of *Berakhot*. The differences between the narrative(s) there and the narrative here relate both to the behavior of the characters and to the nature of the halakhic dispute at issue. Although the question as to the obligatory nature of the evening prayer (as well as the further dispute noted in the *Bavli* regarding the laws of the firstborn) have significant communal ramifications, they don't begin to compare to the central national importance of determining the dates of the festivals. It would appear that the Mishnah and the Talmuds differ from one another in the way in which they wish to portray the character of R. Gamliel; see my, "שיטת העריכה," 104 n. 77, and compare Henshke, "היחל קיבל ר' יהושע," 97 (but see my reservations regarding Henshke's conclusions above, n. 24 and below, n. 88).

b. Harkinos was a venerable and extremely elderly Sage, lacking both official standing and a power base. Hence, whereas R. Joshua had the standing to mount a challenge to R. Gamliel's authority, R. Dosa's opposition posed no such challenge. Moreover, a decree against a man as old and as venerable as R. Dosa would be untenable, from the standpoints both of human relations and public relations.⁴²

These explanations, based upon sources external to our story, are probably correct. However, the details of the story itself can lead us to another, more fundamental explanation (which does not conflict with the others), first suggested by R. Moses Zakut, a seventeenth-century Italian rabbi, who wrote: "For it became known to R. Gamliel that R. Dosa accepted his (that is, R. Gamliel's) ruling in practice, as appears from [the continuation of] the *mishnah*: 'If we were to call into question. . .'"⁴³ Despite his fiery tone and powerful metaphor,⁴⁴

42 This explanation combines several answers that have been suggested in diverse sources, and all of them are cited in Heršel's השנה ראש חסכת על חכמים 38b, to the text גורני עליך. R. Dosa's exceedingly advanced age relative to the leading Sages of Jabneh emerges from *y. Yebam.* 1:6 and *b. Yebam.* 16a, and see י"ז קול הרמ"ז and תפארת ישראל to our *mishnah*; Finkelstein, *Akiba*, 119; Simon-Shoshan, "*Halakhah LeMa'aseh*," 103. R. Joshua's position of leadership on the court is based on a statement in *b. B. Qam.* 74b (possibly contradicted by *y. Ber.* 4:1 7d) and see Samuel Edels (Maharsha), *אודות* to *b. Roš. Haš.* 25a; תפארת ישראל; Isaac Halevi, *דורות הראשונים* (6 vols.; Berlin: B. Herz, 1923) 1.5, 303–6; Hugo Mantel, *Studies in the History of the Sanhedrin* (Cambridge, Mass.: Harvard Univ. Press, 1961) 102–4, 118–29; Schwartz, "מכהנים בימים," 29 and n. 21. According to Schwartz, R. Dosa's marginal position in the court stems from his "priestly" outlook and not solely from his advanced age. Historians have attempted to situate the clash between R. Joshua and R. Gamliel within the broader framework of controversy regarding the division of authority within the court. See: Halevi, *דורות הראשונים*, 1.5, 303–6; Mantel, *History of the Sanhedrin*, 142; Gedalyahu Alon, *The Jews in their Land in the Talmudic Age*, trans. Gershon Levi (2 vols.; Jerusalem: Magnes, 1980–84) 1:318. However, it is doubtful whether our scanty knowledge regarding the nature of the Jabneh court and the standing of its leaders can provide a firm basis for such an investigation.

43 רבליל עיבורי 38b, שפתי חכמים על מסכת ראש השנה; to our *mishnah*; בית דוד וקול הרמ"ז *להלכה: מקורותיה והתפתחותה*, compare Ephraim Elimelekh Urbach, *Givatayim: Yad Latalmud*, 1984) 182. There is no basis in the story for the assertion by Simon-Shoshan, "*Halakhah LeMa'aseh*," 147 that R. Dosa "tenaciously insists" on his position. Isaac Hirsch Weiss, *דור דור ודורשו* (5 vols.; Vienna: Brüder Winter, 1904) 2:92 argues that R. Dosa disputed R. Gamliel's ruling face to face, whereas R. Joshua "did not act properly. He did not dispute him face to face and did not rebuke him by saying: You have erred." Weiss's proofs for this claim are unconvincing, and it remains difficult to determine from the information offered in the story whether R. Dosa and R. Joshua were members of the court in which R. Gamliel accepted the witnesses.

44 Schwartz, "מכהנים בימים," 28–29 (followed by Henshke, "יהושע," 91) characterizes R. Dosa's objection as "sharp and loud," as "criticism verging on coarseness," and as "biting opposition" (28). Similarly Simon-Shoshan, "*Halakhah LeMa'aseh*," 101 writes that R. Dosa "ridicules" R. Gamliel's ruling. However, in the rhetoric of a controversy it is in no way surprising to find an analogy or a metaphor which reveals the absurdity of one's opponent's claim, and talmudic literature is replete with arguments whose ironical rhetoric is no less vigorous than R. Dosa's. Hence

R. Dosa did not rule in practice against R. Gamliel, as R. Moses Zakut establishes based on R. Dosa's position in Scene IV.

The difference between the positions of R. Dosa and R. Joshua emerges as well from a close reading of the first scene. R. Dosa explained why R. Gamliel's ruling is unreasonable ("These are false witnesses.⁴⁵ How can one testify that a woman has already given birth, yet the next day her belly is between her teeth!?"), but he does not present a contrary ruling. R. Joshua, however, does just that by asserting "I see your words," a formula that always expresses a practical halakhic conclusion.⁴⁶ The literary skill of our *mishnah*'s redactor manifests itself in the hierarchical arrangement of the objections advanced by three Sages against R. Gamliel. R. Johanan ben Nuri (in the narrative preceding ours) voices his objection before the witnesses reach R. Gamliel, thus presenting no challenge to R. Gamliel's leadership. R. Dosa employs sharp rhetoric in contesting R. Gamliel's decision, but his failure to accompany the rhetoric with an alternative ruling neutralizes the challenge. Only the third sage, R. Joshua, actually challenges R. Gamliel's decision by issuing a contrary ruling. While the author hides from view any legal argument that might elucidate the rationale underlying R. Gamliel's ruling, he does clearly imply a persuasive rationale for issuing his decree, namely R. Joshua's assault upon his authority – wisdom vs. acceptance!

R. Gamliel thus emerges as a leader willing to tolerate counter-arguments and even biting criticism. Only direct challenge to his leadership elicits his harsh response, especially regarding a matter with profound communal-halakhic

R. Dosa's fiery rejoinder does not prove that he intended to flout R. Gamliel's ruling in practice, as Schwartz and Henshke claim. On p. 28 Schwartz brings a further argument for his claim – that R. Gamliel's decree proves that his disputants intended to oppose his ruling on a practical level. I accept this argument, but it proves the opposite of Schwartz's claim: since R. Gamliel leveled his decree only at R. Joshua and not at R. Dosa, this supports the reading that in fact only the former intended to issue a contrary ruling, whereas the challenge of the latter stopped short of actually ruling differently.

- 45 Reading R. Dosa's exclamation "These are false witnesses!" as a theoretical claim, not implying of necessity a contrary ruling, may be further supported by noting the use of the same formula by R. Yoḥanan ben Nuri in the story brought earlier in our *mishnah*. R. Yoḥanan ben Nuri did not prevent the witnesses from continuing on to Yabneh – as did R. Akiva in *m. Roš. Haš.* 1:6 – and he did not continue to maintain his position after R. Gamliel had issued his ruling (hence R. Gamliel did not react negatively to his position).
- 46 In a similar vein דוד בן דוד to our *mishnah* argues: "He was more annoyed by him because he decided between them and said to R. Dosa: I see your words." Compare Ḥaim Licht, *מסורת וחידוש: סוגיות בספרות חז"ל* (Giv'at Ḥavivah: Merkaz Ḥiloni Liyešira Yehudit, 1989) 90. There is no foundation for the assertion by William Scott Green, *The Traditions of Joshua ben Hanania: Part 1, The Early Legal Traditions*, SJLA 29 (Leiden: E. J. Brill, 1981) 117 that "the addition of Joshua's agreement . . . does not change matters" and that R. Gamliel deflected the dispute without justification from the issue of "how to decide" to the issue of "who decides." In addition to what I have written here, see my arguments against Green's claim in *שיטת העריכה*, 97, n. 47.

ramifications. The dramatic repercussions of R. Joshua's formulation, "I see your words" (6) are underscored by the verbal echo in R. Gamliel's closing words, "You accepted my words" (20). *Seeing* words of dissent flouts the court's authority, making the clash unavoidable; *accepting* the words of R. Gamliel reaffirms that authority, bringing the conflict to its conclusion.

THE NATURE AND CONTENT OF THE DECREE

R. Solomon He'adani, in his commentary *Melekhet Shlomo* (to line 11), proposed an answer to question four above, which again focuses on the tension between halakhic truth and authority. He argues that R. Gamliel's demand of R. Joshua to desecrate his own Day of Atonement is rooted in the following consideration:

Even though I do not suspect that you wish to flout my words entirely, but rather that you seek to be stringent and observe two Days of Atonement, I decree that you should keep only one day – that which corresponds to my calculation – and desecrate the Day of Atonement which corresponds to your calculation.⁴⁷

A similar understanding of R. Joshua's motives emerges from the conclusion of R. Akiva's homily in Scene III: "Whether at their proper time or not, I have no set times beside these." R. Akiva emphasizes – apparently based on the word "*These* are the set times . . ." – that God recognizes only one date for observing the festival. This argument seems designed to counter R. Joshua's plan to observe two Days of Atonement, once (the second date) to mark the actual day of the fast and once (the first date) in order not to flout R. Gamliel's authority (or perhaps not to separate himself from the community).⁴⁸ This would appear to be R. Gamliel's understanding of R. Joshua's plans; hence he saw no point in decreeing observance of a day that R. Joshua already intended to honor, but demanded the next step, namely to relinquish any adherence to the Day of Atonement that corresponded to his own calculations.

However, this explanation, which provides a persuasive rationale for the nature of R. Gamliel's decree, presents us with an equally difficult problem. If R. Joshua planned in any event to observe R. Gamliel's Day of Atonement, then his behavior would seem to pose no challenge to R. Gamliel's authority, and

47 Compare Baneth, *Mischnajot Mo'ed*, 400. Finkelstein, ברכות 17א, 2:126 arrives at a similar conclusion, which he bases on the questionable assumption that R. Joshua was aware of the *baraita* in *Sifra*, *Emor* 10:3, "If it was sanctified by [witnesses who were misled by] coercion or negligence or error – how do we know it is sanctified? . . ."

48 It bears investigating whether, as Finkelstein believes (see previous note), R. Joshua saw both days as halakhically binding or whether he saw only the second day as binding but intended to observe the first day as well in order to keep a low profile and/or to avoid separating himself from the community.

R. Gamliel would thus have no reason to issue such a harsh decree. Let us note again that R. Gamliel is presented in our story as willing to accept criticism and controversy provided that they do not pose a threat to the standing of his court and to national unity. It would therefore appear that regarding this point as well R. Gamliel is motivated by public policy concerns, and that he felt that R. Joshua's intended compromise fell short of allaying the threat to the court's authority and to national cohesiveness. Even assuming that R. Joshua would observe his own Day of Atonement behind closed doors, the word would likely get out and rapidly become public knowledge. As soon as the community discovered that a leading Sage observed an additional Day of Atonement, even if only as a supererogatory stringency, the rumor mill would be impossible to stop. News regarding R. Gamliel's enigmatic decision, so sharply and graphically challenged by R. Dosa, would leave an indelible impression on the public mind. For R. Gamliel, the importance of maintaining the public's faith in the court dictated that R. Joshua demonstrate his absolute allegiance to its decisions, even to the point of complete abnegation of conflicting views.

WHY TWO HOMILIES?

Two scenes in our story are devoted to homilies designed to allay R. Joshua's hesitations regarding R. Gamliel's decree by demonstrating that R. Gamliel's ruling is binding, at least after the fact. Both Talmuds cite a *baraita* in which R. Joshua responds to R. Akiva's homily: "You have comforted me, Akiva" (*y.Roš Haš. 68b; b.Roš Haš. 25b*). The Mishnah, on the other hand, cites no response by R. Joshua. However, inasmuch as his silence presumably implies assent, we may wonder, together with Schwartz:

Why does the *mishnah* need to quote two persuaders and two arguments in order to prove the necessity of accepting that decision? Didn't R. Akiva's words suffice for R. Joshua? What produced the important difference between these arguments, namely that the first argument pertains to the specific issue of the festivals per se (as we see in the proof-text, *These are the set times . . .*), while the second argument addresses the broader question of the court's authority?⁴⁹

Schwartz's resolution of these questions rests upon a radical reinterpretation of the fourth scene, according to which it was not R. Dosa who attempted to persuade R. Joshua, but rather R. Joshua who had come before R. Dosa, his co-rebel, in order to explain his decision to accept R. Gamliel's decree. By means of this

49 Schwartz, "מכהנים בימינו," 28–29. Licht, מסורות וחידושים, 89–90 suggests that R. Joshua wanted to find out if other Sages would support his refusal to bow to the decree. This explanation is difficult in light of R. Dosa's marginal position in the Jabneh court.

reading (which Henshke accepts as well),⁵⁰ Schwartz seeks to resolve further interpretive problems which were raised above: Why did R. Gamliel not direct his decree at R. Dosa? How may we explain R. Dosa's complete turnabout from fierce opposition to unreserved support?⁵¹ Above all, Schwartz accords considerable weight to the vagueness of the pronouns in line 13, where it is not clear who spoke to whom. Puzzled by the silence of other commentators regarding this point, Schwartz argues:

This usual reading, where it is R. Dosa who advises R. Joshua to accept the decree is questionable. . . . In my opinion, it is so natural to read this section with R. Joshua as the speaker, that I can see no way of explaining the popularity of the normative reading other than as evidence of yearning for a "happy end" to the story in which all come to agreement in the end.⁵²

Schwartz concedes that in his reading the story's aesthetic value is impaired, inasmuch as:

There is no mention of R. Dosa's response, and we may conclude that he was steadfast in his opposition. . . . The author could not provide a perfect "happy end," but he did his best by ignoring R. Dosa's position after R. Joshua had presented his argument.⁵³

It is difficult, however, to posit that a skilled narrator failed to achieve his own literary goals, and all the more so regarding the impressive conclusion of our narrative.⁵⁴ The literary acumen of our author comes to full expression in Scene V,

50 Henshke, "היאך קיבל ר' יהושע," 91. Simon-Shoshan, "*Halakhah LeMa'aseh*," 150 also favors Schwartz's reading.

51 Schwartz, "מכהנים בימינם," 28 rejects the possibility that R. Dosa changed his mind. He argues that in light of R. Dosa's powerful opposition to R. Gamliel, which must have included practical ramifications, a turnabout in his position would be so sharp that the narrator would be obligated to note the change and spell out its reasons. This argument fails to convince for the following reasons: 1. Abrupt and unexplained turnabouts are found not infrequently in talmudic Sage stories, and for one example see the narrative of R. Joshua ben Levi and the Messiah in *b.Sanh.* 98a, where R. Joshua ben Levi "forgets" to ask the Messiah the question for whose sake he embarked on the journey to Rome (whether he is destined for the world-to-come). 2. Between R. Dosa's original words in Scene I and his homily in Scene IV appears R. Gamliel's decree of Scene II, which alone could serve as a reason for changing his mind. However, the main objection to Schwartz's argument is that – as I have argued above – R. Dosa opposed R. Gamliel's logic, but never issued a contrary ruling.

52 Schwartz, "מכהנים בימינם," 26.

53 Schwartz, "מכהנים בימינם," 29. Henshke's view of the main message of the story differs from that of Schwartz: whereas Schwartz sees the story as a rabbinic polemic against "realists" on the right and Christians on the left, Henshke, "היאך קיבל ר' יהושע," 94 views it as a "paean of praise to the House of the Patriarch." However, even according to Henshke's reading, R. Dosa's continued rebellion casts a pall over the jubilant triumph of the Patriarch. Thus for Henshke as well, it would appear that the "happy end" leaves some ends still loose. Henshke does not address this point.

54 It might be argued that the narrator's adherence to historical factuality takes precedence here

where he skillfully weaves together key words and motifs from the other four scenes, thus achieving *closure*, in which “the questions posed in the work are answered, tensions released, conflicts resolved.”⁵⁵

As opposed to Hollywood-style “happy endings,” literary closure does not always guarantee that the hero in the white hat always will triumph or that goodwill and harmony will reign. What it does is to provide a response to the questions and the conflicts presented in the narrative, resolving them or bringing them into some kind of equilibrium. Our story centers, on the personal level, on R. Joshua’s struggle with his dilemma and with his complex relationship with R. Gamliel. On the conceptual plane, the narrative presents a clash between truth and individual conscience vs. communal authority. The concluding scene of the narrative resolves R. Joshua’s deliberations, effects a rapprochement between the two main characters, and balances the conflicting values of truth and authority, thus providing closure to the narrative both on the personal and the conceptual plane. However, in Schwartz’s reading, the underlying conflict with R. Dosa is sidestepped; hence the apparent closure provided in Scene V is illusory, worthy perhaps of a post-modern work,⁵⁶ but hardly appropriate for a mishnaic-era composition.

There is no need, however, to tamper with the story’s aesthetic quality in

over his literary aims, but this claim is dubious in general regarding Sage stories; hence such a claim regarding a mishnaic or talmudic narrative would need to be supported by weighty evidence. In the case of our narrative, besides the arguments offered in the body of the article, it bears noting that Schwartz himself argues elsewhere that our narrator preferred literary aims to historical accuracy when he added (according to Schwartz’s conjecture, which will be discussed below) Scene III, in order to satisfy the curiosity of readers who might wish to learn what was R. Akiva’s position in this well-known dispute.

55 This is one of five meanings for the term “closure” proposed by Don Fowler, “Second Thoughts on Closure,” in Deborah H. Roberts, et al., eds., *Classical Closure* (Princeton: Princeton Univ. Press, 1997) 3. According to Jonathan Culler, *Structuralist Poetics* (Ithaca: Cornell Univ. Press, 1975) 222, in every narrative “[t]he end must be made a transformation of the beginning so that meaning can be drawn from the perception of resemblance and difference.” Massimo Fusillo, “How Novels End: Some Patterns of Closure in Ancient Narrative,” in Roberts, *Classical Closure*, 209, notes different kinds of closure found in ancient classical literature, some more harmonious and some more complex.

56 A postmodern reader might see such an ending as a fine literary achievement, in which R. Dosa’s silence serves as an “aporia” undermining the ostensibly “happy end.” In talmudic literature there is certainly no lack of irony, but this is generally indicated by means of “classic” literary devices, such as those that feature in “close reading,” and not by means of the “aporias” favored by postmodern modes of reading. I discussed the distinction between the ambiguities and tensions encoded in mishnaic design and postmodern techniques of deconstructing meaning in my paper, “Rabbinic Texts: Reconstruction or Deconstruction?” delivered at the EAJIS conference in Moscow, August 2006. In any event the “happy” closure of our story is accomplished solidly and skillfully, as I have demonstrated. For his part Schwartz, of course, is not suggesting a post-modern reading of our story, and he would prefer to see the end of our story as a partial failure rather than as an “aporia.”

order to resolve the problems noted by Schwartz, inasmuch as the reason why two homilies were necessary may readily be derived from close reading of the story and it accords with the interpretive approach that has guided our reading thus far. Two scenes are necessary because the homilies presented therein diverge significantly from one another. R. Akiva's homily leads to an important conclusion regarding the sanctification of the new moon: since God recognizes no set times other than those established by the court, observance by R. Joshua of an additional Day of Atonement would be pointless.⁵⁷ R. Dosa, on the other hand, does not relate at all to issues of the calendar, focusing instead on an issue of public policy: the standing and authority of the court.⁵⁸

Even though both arguments lead to a common practical conclusion, they follow different routes. Even though R. Joshua presumably agreed with R. Akiva that only the day sanctified by the court has validity, this apparently did not allay his distress. R. Joshua's continued distress stems from a different question, whose nature can be reconstructed from R. Dosa's answer: who constitutes the court authorized to establish the new moon and the festivals?⁵⁹ Given the highly problematic nature of R. Gamliel's ruling and the fact that two leading Sages have disputed it, R. Joshua wonders whether R. Gamliel's court deserves to be regarded as authoritative. Perhaps — although our story provides no such

57 There is thus no foundation for the claim by Baneth, *Mischnejot Mo'ed*, 400 that R. Joshua was unconvinced by R. Akiva's homily because R. Akiva proved only that it was obligatory to observe R. Gamliel's date for Yom Kippur, whereas R. Joshua's difficulty involved accepting the need to violate his own date for Yom Kippur.

58 Note R. Dosa's language: not "if we call into question *the decision* of Rabban Gamliel's court," but rather — "if we call into question Rabban Gamliel's court." R. Dosa thus presents R. Joshua's position as a challenge to the standing and authority of the court. Compare Ephraim Elimelekh Urbach, *חכמים של חכמים* (Jerusalem: Magnes, 1988) 319–20; Assis, "שני מלכים, כתר אחד," 66; and see next footnote. Henshke, "היאך קיבל ר' יהושע," 93 also notes the difference between the homilies of Scenes III and IV, which he explains in accordance with his novel approach to understanding the story, which will be discussed below.

59 According to Urbach, *חכמים של חכמים*, 319–20, our incident took place at a time when the court's authority was shaky (compare Assis, "שני מלכים, כתר אחד," 67), and R. Dosa convinced R. Joshua of the need to shore up its position. While I believe that there is solid historical and textual basis for this assumption (see above, n. 22), it is not essential for comprehending the narrative logic of the story. Even at a time when the court's authority is solidly grounded, a problematic ruling could undermine the loyalty of a key figure such as R. Joshua, which in turn could lead to a deterioration of the court's standing. Moreover, as we shall see below, R. Dosa's homily in fact presupposes that the court's authority enjoys public support (although there is no proof that public support was firm and unchallenged). According to Weiss, *דור דור ודורשיו*, 2:92 n. 1, R. Joshua continued to wonder after R. Akiva's homily "if even an individual who knows that sanctification of the new moon was not in accordance with the law is obligated to follow it or whether he is entitled to question R. Gamliel's court itself." In the second half of this sentence, Weiss seems to touch on the key point, but the first half of the sentence fails to address the point which R. Akiva drove home in his homily, as explained above.

indication – R. Joshua may have had earlier misgivings regarding R. Gamliel's stewardship.⁶⁰ In any event, R. Akiva's brilliant contribution to the halakhic-theological question regarding man's role in determining the times sanctified by God fails to resolve R. Joshua's knotty social-political issue: which Sage is endowed with the authority to fix the calendar for the entire Jewish people?

R. Akiva failed to calm R. Joshua's stormy conscience, but he did manage to influence the story's events, albeit rather paradoxically.⁶¹ Before R. Akiva's homily, R. Joshua contemplated observing two Days of Atonement, an option eliminated by R. Akiva. However, rather than resolving R. Joshua's dilemma, this sharpened it for him. It is not surprising that after R. Akiva's homily, R. Joshua consulted with R. Dosa, because R. Akiva's unequivocal resolution of the halakhic-theological issue, allowing no waffling, necessitated an unequivocal resolution of the communal-political factor. The conclusion that "I have no set times beside these," foreclosing the option of compromise between truth and communal loyalty, necessitated a clear-cut answer to the question of whether the full authority of the court was accorded to R. Gamliel's court.

Schwartz's further argument regarding the ambiguity of line 13 is inconclusive, inasmuch as vagueness of pronoun reference is far from unusual in rabbinic literature.⁶² Not infrequently commentators have debated questions of pronoun reference regarding other rabbinic narratives. For example:

"He said to him, 'Peace unto you, master.' But he did not answer him."
(*b. Ta'an.* 20a) – Did R. Simeon b. 'El'azar greet the ugly man, or the other way around?⁶³

"[Satan] went and fell before him." (*b. Qidd.* 81a) – who fell before whom?⁶⁴

60 R. Gamliel's words at the story's conclusion, "my master in wisdom," perhaps evince awareness that R. Joshua never regarded him as the wisest sage of his generation. Moreover, while this acknowledgment might be designed for purposes of reconciliation alone, it would appear rather that R. Gamliel here affirms the truth of R. Joshua's perception. Our narrative gives the impression that R. Joshua has never previously given expression to his misgivings regarding R. Gamliel's qualifications for leadership (assuming that he felt this way in the past), and in similar fashion the story in *b. Ber.* 27b presents our story as the first of a series of clashes between the two Rabbis.

61 Compare above, pp. 8–10, regarding the relationship between "R. Akiva went and found him in distress" (8) and "He went to Jabneh" (18).

62 See Abba Bendavid, *לשון המקרא ולשון חכמים* (2 vols.; Tel Aviv: Dvir, 1971) 2:695–98; Simon-Shoshan, "Halakhah LeMa'aseh," 129; Avraham Walfish, "הסוכה ומשל העבד: החידה שבפשר," *Mehqerei Yerushalayim besifrut ivrit* 23 (2009) 78, n. 3. Schwartz, "מכהנים בימינו," 34 n. 41, notes the existence in talmudic literature of vague pronoun references, but on p. 27 he argues for the implausibility of such vagueness in our case, based on reasons that will be discussed below.

63 This question is subject to dispute between Jonah Fraenkel, *סיפור האגדה: אחדות של תוכן וצורה* (Tel Aviv: Hakibbutz Hame'uhad, 2001) 190, 194, and Yair Barkai, *הסיפור המיניאטורי* (Jerusalem: Israeli Ministry of Education, 1986) 44.

64 See Barkai, *הסיפור המיניאטורי*, 54.

In instances such as these, we cannot rely on non-existent rules of syntax.⁶⁵ Determination of the pronoun reference can be rooted only in context and narrative logic, which of course may sometimes be subject to different understandings. In our case, however, the reader should have no problem discerning who is asking the questions and who is responding. The previous three scenes made clear which of the characters is torn by internal debate, hence in need of encouragement and persuasion.⁶⁶ The literary design, which focuses attention on R. Joshua's inner drama, guides the reader naturally to the intuitive understanding, prior to arguments and proofs, that in Scene IV as well, the narrative focuses on the main protagonist's doubts and inner turmoil.⁶⁷

There is, then, no basis for Schwartz's revolutionary claim that R. Joshua is the speaker/homilist who comes to convince the obdurate R. Dosa in Scene IV. Henshke argues in favor of Schwartz's radical rereading on the basis of his own novel understanding of the previous scene, and we will discuss this point below.

R. Dosa's homily is an important signpost of the story, presenting explicitly the central motif which had, until this point, been submerged beneath the surface. In Scenes I and II, R. Joshua's challenge to R. Gamliel's authority and R. Gamliel's concern for reinforcing his standing and for national unity were implied by what appeared on the surface to be a debate regarding the calendar. In R. Dosa's homily the socio-political aspect of the confrontation occupies cen-

65 Schwartz, "מכהנים בימים," 27 argues that "the general rule is that successive verbs have the same subject unless provided with contrary information or indications – and in our case there is no information or indication of this sort." However, in opposition to this "general rule" we may cite numerous instances where the subject shifts without any clear indication. In addition to the examples cited above, where it was unclear whether the subject shifted or not, there are unequivocal examples, such as: "his [= R. Hanina ben Dosa's] disciples went and found him/it [whom – R. Hanina?] dead at the entrance to his [that is, the lizard's] hole" (*t. Ber.* 5:20).

66 There is no foundation for the claim by Green, *The Traditions of Joshua ben Hananiah*, 117–19 and Shama Kanter, *Rabban Gamaliel II: The Legal Traditions* (Chico: Scholars Press, 1980) 107–11 that R. Joshua was absent entirely from the original story and was added at a later stage, and Schwartz, "מכהנים בימים," 35–36 has already dismissed their arguments. There is likewise no basis for the claim by Simon-Shoshan, "Halakhah LeMa'aseh," 148 that our story is a conflation of two traditions, one featuring R. Dosa and one featuring R. Joshua.

67 Schwartz, "מכהנים בימים," 27 also suggests a literary insight as basis for his claim that R. Joshua is the homilist speaking in Scene IV. He argues that the opening of Scene IV closely parallels the opening language of Scenes I, III, and V: "he came to him . . . and said to him" (12–13), "two came and said" (1), "he went . . . and said to him" (8–9); hence, "just as in these other three cases it is clear that the subject of the first verb is the also the subject of 'he/they said,' it stands to reason that this is the case in paragraph IV as well." In my opinion, however, syntactical uniformity is not included among the literary functions of stylistic parallelism. Parallelism may be an indicator of similarity or contrast regarding content, motif, or idea, but not of uniformity regarding the shifts of subject in the sentence. Indeed on occasion the opposite may be the case – in order to indicate a link of content or idea, a narrator may employ similar phraseology despite differences in their meaning and syntax.

ter stage and is resolved decisively and convincingly. The two persuasion scenes make clear that there is indeed a weighty theological-halakhic issue at stake between R. Gamliel and R. Joshua, but the confrontation is ultimately rooted in communal, and perhaps even in personal, issues.

The deployment of two persuasion scenes serves a further literary function, regarding the temporal dynamics of the story. R. Joshua's journey to R. Dosa is a surprising development which delays the story's denouement, maintaining the suspense until the beginning of the following scene. The dramatic tension is further heightened by the reader's realization that even the brilliant homily of R. Joshua's prize student cannot bring him to a firm conclusion. The second persuasion scene fills a further literary function, closing the circle with the opening scene: the drama which commenced when R. Joshua affirms R. Dosa's position cannot be concluded by R. Joshua until R. Dosa instructs him to do so.

Thus each of the two persuasion scenes contributes to the literary design of the narrative on multiple levels: advancing the plot, revealing the stages of R. Joshua's intellectual and emotional odyssey, and developing the ideological conflict at the heart of the story. On the ideological plane, the inclusion of both scenes adds a further element as well. As noted above, both homilies contravene the reader's preliminary intuition: The homily of Scene III replaces the phrase 'their appointed times' with 'whether at their proper time or not,' and the homily of Scene IV equates all courts with Moses' court. The counter-intuitive character of these readings underscores the scope of the conceptual revolution which R. Joshua (together with the reader) must undergo in order to accept R. Gamliel's decision.

By underscoring R. Joshua's difficulty in resolving his deliberations the inclusion of two persuasion scenes also enhances the impact of the concluding scene. Having gained full appreciation of the gravity of the issues preventing R. Joshua's submission, the reader may now fully appreciate the cardinal importance of the value which ultimately overrides these issues – a central source of authority for the Jewish nation. However, the conclusion may be viewed from a different perspective as well. While R. Joshua's doubts have been resolved on the practical level, there is no indication that R. Joshua's mind is easy. As R. Gamliel celebrates his complete rapprochement with R. Joshua, the narrator gives us no inkling of what R. Joshua is thinking. We have no way of knowing whether he made his peace with R. Gamliel or whether after-effects of the bitter conflict still remain?⁶⁸ Perhaps R. Joshua's mental state interests the narrator

68 This of course is the point of departure for the narrative in *b.Ber.* 27b–28a, which presents our *mishnah* as the first in a series of three clashes which lead to R. Gamliel's deposition. According to Henshke, "היאך קיבל ר' יהושע," 98, in the version of our narrative recorded in the *Mishnah*: "the discordant and overbearing chords are thus not forgotten even in the beautifully harmonious closing scene."

only as long as it enlivens the unresolved practical issue. Once R. Joshua has surrendered his autonomy in favor of national unity and recognized authority, the narrator sees no reason to continue to reveal the recesses of his soul. However, it is also possible that the story's reticence regarding R. Joshua's attitude at the story's conclusion is a pregnant silence, indicating that the story's closure is not really complete and that the tension between authority and personal autonomy can never be fully resolved.

SCENE III: WHO FOUND WHOM? WHY THE DISTRESS?

Until now our discussion has been based upon the story's language and details as they appear in the current form of the *mishnah*. However, recent scholarship has raised questions about Scene III leading some to far-reaching conclusions regarding its original language and original meaning. Both Schwartz and William Scott Green have suggested, for different reasons, that the entire scene is a later addition to the narrative.⁶⁹ David Henshke cogently refuted their contention, arguing that:

Methodologically, it is difficult to remove an entire section from an extant mishnaic text without any real basis for doing so – whether textual or literary.⁷⁰

Moreover, deleting this scene also removes a detail which plays an important role in the story: "R. Akiva went and found him in distress." The omission of this line removes from the story any mention of R. Joshua's distress, the main motive for the interactions between R. Joshua and the other characters throughout the narrative.⁷¹

Jacob N. Epstein,⁷² followed by Henshke, felt that this scene was an integral part of the original story, but they argued that the original version of the story was lacking one detail: the name "R. Akiva." They based this claim on two ar-

69 See Green, *The Traditions of Joshua ben Hananiah*, 117–19; Schwartz, "מכהנים בימינם," 35–37.

70 Henshke, "היאך קיבל ר' יהושע," 92.

71 According to the usual understanding of the story, which I have upheld throughout this article, the characters' motives are self-evident. R. Joshua's distress motivates R. Akiva's homily, as well as R. Joshua's decision to consult with R. Dosa in the following scene. But even according to Schwartz's reading, in which R. Joshua reverses his position on his own and goes to R. Dosa only to inform him thereof, deletion of Scene III will still remove from the narrative the background and the reasoning which lead him to change his mind, as noted by Henshke, "היאך קיבל ר' יהושע," 92: "According to this reconstruction there is no explanation for the reversal of R. Joshua's position: his initial rebelliousness, which necessitated such a drastic step as R. Gamliel's decree, has evaporated without a trace, without our having heard any kind of explanation which would prepare us for such a surprising turnabout."

72 See: Jacob N. Epstein, מבוא לנוסח המשנה (Jerusalem: Merkaz Press, 1948) 420 and his מבואות לספרות התנאים, 370 and n. 42.

guments: 1. The word order of line 8 does not follow normal Hebrew syntax – normally the subject (R. Akiva) of the two verbs *went* and *found* should be placed between the two (הלך ר' עקיבה ומצאו), rather than after both of them (הלך ומצאו ר' עקיבה). 2. The Jerusalem Talmud, questioning whom R. Gamliel sent to inform R. Joshua of his decree, argues that it must have been R. Akiva. As proof the Talmud cites a *baraita* in which R. Joshua says, “You have comforted me Akiva,” clearly assuming that R. Joshua’s interlocutor in Scene III must be the messenger sent to him by R. Gamliel.⁷³ The fact that the Jerusalem Talmud resorts to this *baraita* to prove the identity of R. Joshua’s interlocutor rather than citing the *mishnah*’s statement, “R. Akiva went and found him in distress,” seems to indicate that in the *Yerushalmi*’s version of the *mishnah*, the name “R. Akiva” was absent. Based on the premise that “R. Akiva” was missing from the original version of the story, Epstein and Henshke suggest an explanation for the awkward syntax of this line. At first, “R. Akiva” was appended to the text as a marginal notation (He went – who? R. Akiva), and only later was this addition incorporated into the body of the text, but not in the grammatically correct position.

For Epstein this explanation has no consequences beyond reconstructing the history of the mishnaic text,⁷⁴ but for Henshke, the missing “R. Akiva” has important ramifications for understanding the original meaning of this *mishnah*. He reasons that if R. Joshua’s interlocutor of Scene III is indeed the messenger sent by R. Gamliel, it follows that the messenger found R. Joshua in distress even before he had a chance to inform him of the harsh decree. Before hearing of the decree, R. Joshua has no cause for distress – except for his own actions

73 If the *Yerushalmi*’s text of line 8 omits “R. Akiva,” then without a doubt the one who went and found R. Joshua in distress was R. Gamliel’s emissary from the previous line. But we need not accept the converse argument – that since the *Yerushalmi* assumes the identity of the homilist with the emissary, it must have omitted the words “R. Akiva” – because, as pointed out by Henshke, “היאך קיבל ר' יהושע,” 85, “he went and found” in mishnaic Hebrew usually refers to a subject who has already been mentioned. Henshke further argues that even the verb *went* (הלך) alone could refer only to the emissary, because were the *mishnah* to describe a visit by anyone else it should have said “came to” (בא אל), as it did at the beginning of Scene IV. However, Henshke’s argument is unconvincing, because *went* and *came* play different literary roles in the story, as explained above, pp. 8–10, and, despite Henshke’s claim that “went and found” refers “always” to a previously-mentioned subject, there are exceptions to the rule. See for example: *t.Ber.* 3:20: “his disciples went and found him dead at the opening of his hole.” However, even if the language of the *mishnah* does not prove conclusively that the one who “went and found” must have been the emissary, it is quite possible that the *Yerushalmi*’s reading is grounded in the usual use of “went and found,” as analyzed by Henshke.

74 In his opinion the interpretive addition conforms to the intention of the original narrator, and he further suggests that the omission of the name “R. Akiva” reflects the fact that our *mishnah* was originally part of an Akivan source, which was originally formulated in the first person: “I went and found.” Henshke, “היאך קיבל ר' יהושע,” 86–87 utterly rejects this proposal.

in the previous scene. It follows that by the time Scene III opens, R. Joshua had already recanted his opposition to R. Gamliel, even before hearing of his decree about the Day of Atonement. From here Henshke derives his radical conclusion: the homilist who taught in both scenes III and IV that R. Gamliel's ruling was binding was R. Joshua himself! As further support for this reading of Scene III, Henshke argues that it is unreasonable that a student – whether R. Akiva or some anonymous messenger – would expound a halakhic homily before his teacher without requesting and receiving permission to do so. The Babylonian *baraita*, in which R. Akiva is explicitly identified as the homilist, presents the conversation appropriately: “Rabbi, permit me to state before you something [lit. one thing] from what you have taught me.”⁷⁵ By contrast, the language of the *mishnah*'s homilist is “I can demonstrate,” a formula appropriate for a teacher expounding before his student but not for a student proposing an idea before his teacher.⁷⁶

Before addressing the substance of Henshke's argument, it should be noted that his main claim relates to the presumptive original version of the story in which “R. Akiva” is missing. In the final version of the story – a version known already to the redactors of the *Bavli*⁷⁷ – there is no reason to assume that R. Joshua was distressed before learning of the decree. The extant text does, however, seem to leave two of the other problems raised by Henshke, unsolved: the awkward syntax of line 8 and R. Akiva's failure to request permission from his teacher, R. Joshua, before expounding the verse from Leviticus. The latter argument is far from decisive, and presumably Henshke intended it only as a supporting claim and not as solid evidence in its own right. There are innumerable cases where *baraitot* present expanded versions of mishnaic texts, and it is entirely possible that the Mishnah here, as elsewhere, omitted for the sake of brevity the preliminary pro-forma request for permission demanded by disciple-master etiquette and opened the student's comments with the standard formula “I can demonstrate.”⁷⁸ However, the other two arguments, from awkward syntax and from the *Yerushalmi*, would appear to build a fairly solid case for the Epstein-Henshke emendation and, in turn, for Henshke's radical reinterpretation.

If we do adopt this emendation, we should note that the addition of the two words “R. Akiva” did not detract from the narrative's literary quality. Moreover, if Henshke is correct regarding how the original version of the narrative

75 For textual variants here see Henshke, “היאך קיבל ר' יהושע,” 88 nn. 48–49.

76 This is the text found in most witnesses, and see Henshke, “היאך קיבל ר' יהושע,” 82 n. 15, 88 n. 50. Henshke notes correctly that this question is applicable even if we read “to learn” (ללמוד), as in MS Kaufman.

77 See Henshke, “היאך קיבל ר' יהושע,” 84.

78 This formula is employed by disciples in *m.Sanh.* 5:4 and other sources, as noted by Henshke, “היאך קיבל ר' יהושע,” 88–89 n. 50.

needs to be understood, it would appear that not only did the additional words not impair the story's artistic value, but they actually enhanced it (see below).⁷⁹ Hence the interpretation of the narrative offered in this article, based on the final version of the story as recorded in the Mishnah, is in no way impaired by Henshke's analysis. On the contrary – we would but marvel at the skillful way in which the final narrator improved the story by the mere addition (based on a *baraita*) of two words. However, in actuality it is far from clear that we should indeed accept the Epstein-Henshke emendation, and even if we do, Henshke's revolutionary reading of Scene III is far from compelling.

The awkward syntax of our current text falls short of proving Henshke's radical reinterpretation for several reasons. First, it is questionable whether a departure by the Mishnah from its usual style is sufficient warrant for rejecting a text found in all direct textual witnesses.⁸⁰ Second, what appears to us as awkward usage very well might have been quite acceptable in rabbinic Hebrew. As Abba Bendavid has noted, the word order of subject-predicate in rabbinic Hebrew is complex, influenced by a wide variety of factors.⁸¹ Possibly, in our case, the position of the sentence's subject was determined by the phrase "[he] went and found," a pair of verbs commonly conjoined in rabbinic Hebrew and rarely separated by the subject of the two verbs.⁸² Be that as it may, I would apply here Mordechai Sabbato's caveat, proposed in a different context: "We should not conclude from the fact that a language usage is unique that it is not original."⁸³

As we have seen, the strongest evidence in favor of deleting the words "R. Akiva" is the discussion of the *Yerushalmi*. The assumption upon which this proof is

79 For this reason as well Henshke's explanation of the purported insertion is doubtful, because it is far-fetched to assume that a gloss awkwardly and insensitively inserted into the text could produce the literary gem which currently appears in the *mishnah*. Henshke claims that the addition of the name "R. Akiva" by "reciters and students" impaired the narrative's beauty (see above, n. 68), presumably because in Henshke's view a harmoniously idyllic happy end is superior aesthetically to a tense drama fraught with emotional and conceptual depth.

80 A similar argument is advanced by Henshke himself, as part of his critique of Schwartz's deletion of Scene III: "The vagueness of the subject at the opening of paragraph IV is far from a solid foundation for such a radical move" ("היאך קיבל ר' יהושע", 92). Granting that Henshke, unlike Schwartz, is not erasing an entire scene and that the variant reading seems to be supported by indirect testimony from the *Yerushalmi*, nevertheless Henshke's conclusions are sufficiently radical to warrant stronger proof than an infelicitous use of language. The proof from the *Yerushalmi* will be discussed below.

81 Abba Bendavid, לשון המקרא ולשון חכמים, 2:799.

82 I found two instances: *t.Ber.* 3:20; *b.B.Meši'a* 76b. To the obvious objection that the narrator could have placed the subject before the double predicate (R. Akiva went and found), I would respond that the narrator probably wished to focus attention on the main character, R. Joshua, and did so by alluding to him as the object of "found" (מצא מצור = found him distressed) before mentioning the name of the secondary character R. Akiva, the subject of the two verbs.

83 Mordechai Sabbato, תגובה למאמרו של אהרן עמית, *Sidra* 21 (2006) 149.

based seems clear-cut: the Talmud would surely not seek proof from a *baraita* were it possible to do so by citing a *mishnah*. However, as straightforward as this would appear, it is unclear that this is true in all cases. Here there might be a local reason for citing the *baraita* instead of the *mishnah*. Before asking "With whom was it [= the decree] sent," the Talmud asks: "To whom was it sent?" Regarding this question, the Talmud's citation of the *baraita* rather than the *mishnah* is readily understood, because R. Joshua's name is mentioned in the *baraita*, but not in the *mishnah* (8), as R. Akiva's interlocutor.⁸⁴ Hence, once the redactor of the *sugya* has already cited the *baraita* to answer the first question, it would make sense to cite the same text in order to answer the second question as well.

Moreover, our *sugya* may manifest a more general phenomenon related to the role played by *baraitot* in the redactional history of talmudic *sugyot*. In many *sugyot* there is reason to believe that the *baraitot* belong to the earliest strata of the *sugya*'s redaction, cited without introduction or explanation as supplementary material to the *Mishnah*. In such cases the questions or issues which in the *sugya*'s current form the *baraita* is designed to address were actually added at a later stage.⁸⁵ It may then be that the main reason for citing a given *baraita* is rooted in redactorial aims of the earlier stratum of the *sugya* – or perhaps in subtler redactorial aims embedded in later strata – and has nothing to do with the question which it comes to answer in the *sugya*'s current form.⁸⁶

In our *sugya*, the relevant *baraita* is cited both in the *Yerushalmi* and in the *Bavli* (*Ber.* 25a), preceded in each instance by questions: "To whom was it [the decree] sent?" and "By whom was it sent?" in the *Yerushalmi*, and "Who was in

84 Of course anyone who follows the story to the end will realize that only R. Joshua – who comes before R. Dosa in the next scene and before R. Gamliel in the final scene – could have been R. Akiva's interlocutor in Scene III. However the *Yerushalmi* redactor preferred to adduce explicit attestation by the *baraita* to R. Joshua's participation in the conversation rather than proving his case by plot analysis within the mishnaic narrative proper.

85 Judith Hauptman noted this phenomenon regarding the *Bavli* in her lecture, "ברייטא, מימרא, וסתמא כמרכיבים של הסוגיה התלמודית," delivered at the Bar-Ilan Talmud Department International Conference on May 22, 2006. Similarly regarding the *Yerushalmi* see Menahem Katz, "הלמוד ירושלמי – מסכת קידושין פרק ראשון: נוסח, פירוש ותופעת עריכה" (Ph.D. diss.; Ramat-Gan: Bar-Ilan Univ., 2004) 76–77, who utilizes a comparison of a discussion in the *Yerushalmi* with a parallel discussion in *Gen. Rab.* to demonstrate that the opening and transitional sentences in the *sugya* – absent from *Gen. Rab.* – were added by the *Yerushalmi* redactor. My thanks to Dr. Katz for referring me to his study.

86 Compare the comments of Rabin Shoshtri, cited in my article, "הסוכה ומשל העבר," 79 n. 8, regarding the question found in *b.Sukkah* 29. In similar fashion it would appear that the real reason for the citations in talmudic discussions of parallel or contradictory *mishnahs* is not always the question to which the citation ostensibly relates, and compare my article, "העריכה היוצרת וכו'", *היצר: עיונים בעריכת מסכת קידושין במשנה. בחספתא. ובבל* *JSI* 7 (2008) <http://www.biu.ac.il/JS/JSI/ca.htm> 51 and n. 47. In light of what I have written here, my assumption there regarding differences between redaction of *Bavli* and of *Yerushalmi* should be modified.

distress?" in the *Bavli*. The fact that the identical *baraita* appears in both Talmuds, but is introduced with different opening questions renders highly plausible the conjecture that the *baraita* belongs to the earliest stratum of the *sugya*,⁸⁷ while the questions were later additions. Most probably the *baraita* was cited because it contains information omitted in the *mishnah*'s terse narrative, including a vivid portrayal of R. Joshua's distress and his enthusiastic reaction to R. Akiva's homily.⁸⁸

It indeed is true that the present form of the *sugya* in the Jerusalem Talmud makes better sense if we assume that its mishnaic text omitted the words "R. Akiva," such that the subject of line 8 must be R. Gamliel's messenger; hence, the question "who was sent" is a question that would legitimately concern the Talmud, inasmuch as discovering the identity of the anonymous messenger will simultaneously reveal who was R. Joshua's partner in this important conversation. If, on the other hand, the *mishnah* text of the *Yerushalmi* contained "R. Akiva" in line 8, then the question is artificial, because whether or not R. Akiva and R. Gamliel's messenger are one and the same, we know from line 8 of the *mishnah* the information likely to interest the reader – identical with the information available from the *baraita* – that R. Akiva is R. Joshua's interlocutor. It is not inconceivable, however, that the *baraita* belongs to the early stratum of the *sugya*, and that the redactor employed an artificial question to introduce the second section of the *baraita*. The scholar is thus confronted with the following choice: does the gain of a smoother reading of the Jerusalem Talmud's *sugya* justify the price of emending the mishnaic text without foundation in textual witnesses, or would it be preferable to maintain the attested version of the *mishnah* at the cost of reading the Talmud's question as a redactorial device without real substance of its own?⁸⁹

87 This point was made by Menaḥem Katz in a private communication.

88 The *Yerushalmi* cites only the parts of the *baraita* that relate to these two points. The *Bavli*, on the other hand, brings the language of the *baraita* (or a nearly identical parallel) in full, including a further complement to the *mishnah* – R. Akiva's request for permission to present his homily – as well as a homily that differs from the one brought in the *mishnah*. Despite these differences, it is readily apparent that the discussions both in the *Yerushalmi* and in the *Bavli* share a desire to explain the *mishnah* in light of the *baraita*, as opposed to Henshke's inclination to highlight the significant differences between the *mishnah* and the *baraita*. I agree with Henshke that some of the differences between the *mishnah* and the *baraita* have significant repercussions, but, as I argued above, n. 41, Henshke exaggerates their interpretive ramifications.

89 In light of these observations we should examine other instances where scholars have reconstructed an "original" version of the *mishnah*, without support in the textual witnesses, based on the failure of a talmudic discussion to relate to points that appear in our *mishnah* text. An example that bears reexamination is the deletion by several editors of the reason "that if he had a claim regarding virginity he would arise to go to court" from *m. Ketub.* 1:1, based on talmudic discussion which ignores this line of the *mishnah*. See Saul Lieberman, נשים כפשוטן (3 vols.; New York: Jewish Theological Seminary of America, 1967–73) 1:185; David Halivni, מקורות ומסורות, מהדרה עם פירוש הסוגיות לפרק בתולה נשאת: (Tel-Aviv: Dvir, 1969) 129–30; Joshua Kulp, ":

My inclination is to maintain the textual version for which we have documentation and to refrain from speculative textual reconstructions absent hard and fast proof. In addition to this general methodological consideration, my textual preference here can be supported by a local argument. Henshke correctly notes that if R. Joshua's interlocutor in Scene III would be an anonymous messenger, as would follow from omitting the words "Rabbi Akiva" in line 8, it is highly unlikely that the story's author would attribute to R. Gamliel's anonymous messenger the daring homily of this scene.⁹⁰ However, Henshke's reading does little to alleviate this problem, since it is equally improbable that he would create an unknown featureless character merely to serve as a passive audience for R. Joshua.⁹¹ Only identifying R. Joshua's interlocutor as R. Akiva will provide a secondary character worthy of its role, whether that of a persuading homilist or that of an audience capable of ratifying the homily.

However, even were we to accept the Epstein-Henshke emendation, I believe that Henshke's radical reinterpretation of Scene III is unwarranted, because omitting "R. Akiva" from the text does not entail accepting Henshke's understanding of the background to R. Joshua's distress. Henshke correctly deduces from the omission of "R. Akiva" that R. Joshua's distress preceded his knowledge of the decree, but this should pose no difficulty whatsoever. R. Joshua's dispute with R. Gamliel presents him with a harsh dilemma: if he remains true to his convictions, he will observe Yom Kippur on a different day than the rest of the community; if, however, he observes the same date as the community, he will violate his integrity and acquiesce publicly to a halakhic opinion contrary to his own. Even if we assume – as suggested earlier – that R. Joshua intended to observe both dates, this is an uneasy resolution born of necessity, and unlikely to ameliorate his distress.⁹²

This understanding of R. Joshua's emotional state is to be preferred over that offered by Henshke for the following reasons:

The term "in distress" (מצר) generally refers to unease regarding one's current situation, not remorse over previous actions.⁹³

תלמוד בבלי, מסכת כתובות, פרק ראשון (Ph.D. diss.; Ramat-Gan: Bar-Ilan Univ., 2003) 100–105.

90 Henshke, "היאך קיבל ר' יהושע," 87.

91 There is another interpretive option (suggested by one of my students) based on identifying R. Joshua as the speaker and homilist in Scene III, namely to understand the homily as R. Joshua thinking out loud or attempting to persuade himself. This would still not solve, however, the problem as to why R. Joshua needs the audience of an anonymous messenger.

92 It might also be suggested that the very fact that the general public will observe the wrong day causes R. Joshua's distress. However, the continuation of the story proves that R. Joshua's distress is related to his own personal observance and not to the behavior of the community.

93 In mishnaic and amoraic Hebrew I found no instances of the word מצר (distress) denoting regret, as opposed to some instances of this meaning in later strata of Hebrew, such as *Tanḥuma* (Buber), Lev 10: "A person should not be distressed (יצר) for a transgression committed inadvertently."

Even granting that the term could refer to remorse, it is highly unlikely that the narrator would intend this unusual meaning here, without providing background information or explanatory comments which would clarify the meaning. Henshke claims that the homily which signals his reversal of opinion does in fact provide the background for R. Joshua's distress; however, this clarification comes only after the fact,⁹⁴ and furthermore only those who have already deciphered the rare usage of the term "in distress" as remorse will understand that the homily was expounded by R. Joshua. Having packed an excessive cargo of meaning into the term "distress," Henshke falls victim here to circular reasoning.

There is thus no need to accept Henshke's novel reading which attributes the homilies of the Scenes III and IV to R. Joshua. Henshke's reading is problematic for an additional reason as well. If both homilies were expounded by R. Joshua, then we need to revisit the question concerning the need for two different homilies, explained above as reflecting R. Joshua's need to be convinced of two aspects of his dilemma: the abandonment of the "true" date and the authority of R. Gamliel's court. But if R. Joshua is the homilist, why does he present different arguments before different audiences? Henshke, aware of the problem, suggested that the first homily reflected R. Joshua's true opinion, but he was reluctant to present such a bold idea, based on so radical a reinterpretation of scriptural verses, before the venerable and elderly R. Dosa, who remembered him from his cradle. He preferred instead to attribute his submission to a more "pragmatic and general argument":

Ultimately it is impossible to subvert R. Gamliel's court, for if we were to do so, the process would continue indefinitely and we would need to subvert all the courts that arose in Israel.⁹⁵

In my opinion, there is no foundation in the story for Henshke's distinction between "pragmatic" and halakhic arguments. The "pragmatic" consideration of the fourth scene is not presented as a free-standing idea, but rather as the result of a novel interpretation of the missing names of the elders from Exodus. Whoever proposed the homily in Scene IV realized that pragmatic considerations alone would leave a difficult question unanswered: does every duly-constituted court possess the authority to sanctify the month with no possibility of appeal? If so, would this apply even to a court headed by an unsuitable judge?

94 It is surprising that Henshke is willing to accept a post-facto explanation as fulfilling the narrator's (supposed) obligation to describe and explain sharp turnabouts on the part of the characters. At a different point, he agrees with Schwartz's argument that were R. Dosa the homilist of Scene IV the narrator would have to have explained his volte-face, even though here too the homily itself could be taken as a post-facto explanation.

95 Henshke, "היארץ קיבל ר' יהושע," 93; compare Urbach, מעולמים של חכמים, 319–20.

The homilist sought to preempt this difficulty by suggesting that the authority of the court does not lie with its individual members' standing, but rather in the quality that it shares collectively with Moses' court – that it “stands over Israel.” Were R. Dosa's advanced age to preclude his acceptance of the radical rereading of the verses from Leviticus, presumably he would have no less trouble granting a dictatorial Patriarch absolute authority on the basis of an equally novel reading of the verses from Exodus.

To conclude this section, let us note the dramatic difference among the three suggested readings of the narrative regarding its nature. Of the three readings, only the one suggested in this article would conform to Jonah Fraenkel's claim that most rabbinic stories are dramatic in character.⁹⁶ Schwartz and Henshke, each in his own way, argue that R. Joshua's change of heart occurred far from the floodlights and he reappears on stage only after his sharp reversal has already taken place. Although some tension does remain surrounding the ongoing obduracy they attribute to R. Dosa, this produces no drama inasmuch as the narrative says nothing of a dramatic nature about this supporting character – no response is demanded of him to R. Gamliel's decree, and indeed, according to Schwartz's and Henshke's reading, he neither says nor does a thing after the first scene.

Hence it is far from surprising that both of these scholars seek the meaning of the story's original/reconstructed version in the historical-social, rather than in the dramatic, domain. For Schwartz, the original story (without Scene III) described the victory of rabbinic legal “nominalism” over its “realistic” ideological rival, and the later addition to the story of Scene III added an anti-Christian polemic. In Henshke's opinion, the story is a paean “to the Patriarch – to his authority, wisdom and character.”⁹⁷ However, if we relate to the *mishnah* in its current form, social and political issues are addressed, but only as the backdrop necessary for highlighting the psychological and spiritual drama raging in the consciousness of its protagonist. This indeed has been the traditional reading of the narrative, and numerous commentators and thinkers have cited our story as a symbol of the clash between human and divine truth, as well as between

96 See above, n. 14.

97 Henshke, “היאך קיבל ר' יהושע,” 94. It should be noted that even if we grant that the story intends a “paean” to the Patriarch's authority, it is far from evident that it elicits praise for his wisdom or his character. Whatever the extent to which a reader may regard R. Gamliel's ruling as defensible, nothing in the narrative indicates that it is wise, and indeed we have noted how the narrative rhetoric inclines the reader to cast serious doubt on its validity. As far as R. Gamliel's character is concerned, the end of the story may certainly be read as praising his behavior, as I have argued, but at best this serves as a counter-balance to his high-handed autocratic behavior at the beginning of the story, and I doubt that on balance most readers come away from this narrative with high admiration for R. Gamliel's sterling character.

personal integrity and social cohesion.⁹⁸ There can be little doubt that the story in its current form invites such a reading, and in my opinion, no solid evidence has been presented for the existence of an earlier version of the narrative which differs substantially from the current text in terms of its themes and messages.

CONCLUSION

The story of R. Joshua and R. Gamliel concludes the second chapter of *m.Rosh Haššanah*. Elsewhere I have explained in detail why the Mishnah redactor used our *mishnah* to conclude the chapter and the two-chapter section devoted to sanctifying the new moon, leaving *m.Roš. Haš. 3:1*, which also relates to the new moon, outside the framework. The homilies of R. Akiva and R. Dosa give powerful and striking expression to two of the central concepts upon which the redactor based the halakhic system for sanctifying the new moon: the absolute authority of man to sanctify God's set times and the absolute authority of the High Court. The intricate web of literary associations connecting this *mishnah* with others in the first two chapters of the tractate⁹⁹ sharpens the paradox embedded in these two concepts. Reliance upon human truth and socially-sanctioned authority rather than upon divine truth and individual conviction leads ineluctably to confrontation, deliberation, and inner turmoil. These tensions and deliberations leave a profound impression even after they have been resolved on the practical level. Although the *halakhah* accords with R. Gamliel, R. Akiva, and R. Dosa, the *mishnah* teaches that "these and these are the words of the living God."

Close reading of this story has revealed a dramatic plot centering on the deliberations of an individual torn between conflicting fundamental values. While the conclusion of the narrative presents a clear decision in favor of social solidarity and communal authority, the literary design focuses attention on the process as much as the result, on the conflict and deliberation as much as the bottom line conclusion.

Our literary study is intended not to replace historical analysis, but rather to establish the latter on a firm foundation. The story's protagonists and the institution of sanctification of the new month stand at a central hub of Jewish history, whose historical background and ramifications the historian rightly will seek to investigate. These may include, among others: changes in the conception of sanctifying the new moon during the period of Jabneh, changes in the

98 See, for example: Nahmanides' commentary to Deut 17:11; R. Nissim ben Reuven of Gerona דרשות הר"ן (Jerusalem: Machon Shalem, 1974) 43, 198; Dov Zlotnick, *The Iron Pillar Mishnah* (Jerusalem: Bialik Institute, 1988) 194.

99 See my שיטת העריכה 39, 88–89, 96–99, 102–4, 270–72, 291–86, and also my article, "הגאוגרפיה", בקידוש החודש 253–58.

status of the Jabnian court and of its leadership, and changes in the nature of halakhic and homiletical thinking at Jabneh, etc. In addressing these issues, the historian cannot avoid the controversial issue: how extensive is the kernel of historical fact embedded in the story and to what extent does it reflect the attitudes of the author and/or redactor as opposed to factual history? However, regardless of the historian's approach to such methodological and historiographical questions, it is incumbent upon him to base his discussion on a thorough investigation of the central qualities that give our text a literary character.¹⁰⁰ In the words of a contemporary historian, he must "preface a thematic literary discussion to his historical investigation."¹⁰¹ Such an analysis will make clear that many of the questions which interest the historian did not concern the narrator. Moreover, many textual difficulties for which diachronic-philological solutions have been suggested can be resolved through synchronic close reading techniques without tampering with the text. In our story, as in many talmudic narratives, the characters' inner world – their conflicts, emotions, vacillations, and tribulations – concern the narrator no less than the social, national, and political issues at hand. This differs from the usual tendency of the historian, who is most often concerned with the public rather than the private domain.¹⁰²

100 Inasmuch as the literary nature of the narrative in our *mishnah* is self-evident, there is no need for our purposes to attempt a rigorous definition of "literary character" or to grapple with the thorny question regarding the extent to which different compositions and different genres within the talmudic corpus correspond to this characterization. In many of my other publications I have demonstrated the prevalence of literary qualities in Mishnah, as well as other talmudic compositions, both halakhic and aggadic. Nevertheless our discussion here is independent of the validity of my findings elsewhere.

101 Noah Hacham, "רבן שמעון בן גמליאל בביתר," *Tarbiz* 74 (2005) 549, and literature cited there in n. 11.

102 Compare Albert I. Baumgarten, "Rabbinic Literature as a Source for the History of Jewish Secularism in the Second Temple Period," *DSD* 2 (1995) 33–36. I have directed my remarks primarily towards classical historians, such as Daniel Schwartz, who seek the factual historical kernel reflected in the sources. However, they may be applied equally to proponents of newer historiographical approaches, such as cultural criticism and New Historicism. These approaches pay more attention than did their predecessors to textual interpretation as an independent enterprise and display greater sensitivity to fine textual nuances; nevertheless, the meanings sought by these schools in the text focus on their socio-cultural context and ramifications rather than on the strivings of the individual. Even within the field of literary study, recent years have witnessed a crop of scholars who seek the meaning of literary works, together with those of other cultural creations, in the ideological and political arena. See for example the observation by Joshua Levinson, *הסיפור שלא סופר* (Jerusalem: Magnes, 2005) 105–6: "The narrative repertoire is a tool wielded by the culture to express the dominant ideology, as well as the clash between diverse groups over meanings. . . . The underlying assumption . . . is that culture overall is a rhetorical form, a means of persuasion." To my mind a literary work – certainly a great one – fulfills far more important functions than persuasion, including: to examine, to challenge, to broaden, and to deepen the conceptual, ethical, and spiritual foundation of the culture, and to portray its challenges and conflicts in concrete, powerful, and empathetic fashion. Assis, "שני מלכים, כתר אחד," correctly focuses his reading of the story on the inner dynamic of authority and its meaning –

Using the tools of close reading, we have arrived at a reading which accounts well for the full range of the story's components: plot, motivation, diction, and literary design. Even regarding points where questions regarding the story can be convincingly answered based on external sources, close reading has provided better answers and, often as not, the answers from both spheres complement one another. There is no need for philological emendations and radical reinterpretations which can only impair the story's literary quality inasmuch as the problems they have been designed to solve can be convincingly resolved by paying close attention to the text itself. The story's design focuses the reader on the human drama and the perennial tensions between individual conscience and communal authority and between human versus divine truth. There is no need to resort to extra-textual considerations before exhausting all intra-textual analyses, lest we do justice neither to the text nor to historical study.

The story regarding the clash between R. Gamliel and R. Joshua is placed at a particularly interesting juncture in the Mishnah, and we can learn from it a great deal about the nature of this compilation, its redaction, and its goals. The redactor's decision to include this story attests clearly to his desire to display the human face of the *halakhah* in all its multifaceted vitality, to go beyond stating dry legal contents. The use of language and the literary design of the entire section reveals the theological, ideological and social thinking underlying the halakhic discussions, and these are given powerful concrete expression in our story. The complexity of the system of ideas and values which animate laws of sanctifying the new moon are dramatized here on the personal and interpersonal level. But the Mishnah has a further aim here as well. Beneath the surface of the discussions regarding the calendar, the text alludes repeatedly to the role of the court within the spiritual life of the people. The ideological foundations, as well as the limitations, of the Jabnean court's authority are explored dramatically and poignantly by our narrative. By concluding this section of the Mishnah with this graphic portrayal of conflict, deliberation, and uneasy resolution, the redactor enriches our understanding of the issues and deepens our identification with his (conflicting) values and messages, unearthing from the historical event the spiritual treasures concealed therein.

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which I have interpreted somewhat differently than he – but he misses the human drama which makes our narrative so vital, so powerful, and so perennially inspiring.

Of Proper and Unrestrained Men

Reading Law, Narrative, and Desire in the Babylonian Talmud

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The relationship of legal and narrative elements in the Babylonian Talmud (and other rabbinic works) has attracted much scholarly attention of late. Additionally, a number of scholars have turned to reading rabbinic literature as an expression of the processes by which Rabbis constructed their particular vision(s) of Jewish culture and practice. Bringing these trends together suggests that any exploration of the question “what ‘cultural work’ is being done in this passage?” can only be found in examination of all its individual parts, both legal and narrative, and the interaction(s) between them. The significant problem that arises, however, comes out of the recognition that reading is not a straightforward or simple task, and that literary texts are marked by gaps that must be filled by the reader – and that, moreover, such gaps may be amenable to two or more equally plausible interpretations. In this article, this challenge will be explored through a reading of a *sugya* in *Qidduṣin* 80b–81b. This *sugya* is commentary to *m.Qidd.* 4:12, which discusses rules to regulate *yihud*, private contact between men and women, and thus serves as a significant site of rabbinic thinking about the interrelated realms of gender and sexuality. I will demonstrate that this *sugya* is open to multiple, coexistent, and not necessarily reconcilable means of reading and interpretation. These varying interpretations carry with them in turn different, and again coexistent yet potentially contradictory, implications for eliciting and explicating the cultural work done by the *sugya* as it constructs its ideas about men, women, and sexual desire.

Throughout the history of talmudic study, certain reading strategies have been privileged, most notably an approach in which the Talmud is read as a source for *halakhah*, Jewish law. Aggadic, narrative elements, unless they actively demonstrated a halakhic principle “in action,” as it were, were generally not relevant to such a reading and tended to be overlooked.¹ A variety of recent works in rabbinic studies have convincingly argued, however, that narrative is an essential, and not peripheral, element to the talmudic discourse/*sugya*.² Narrative

¹ See, for instance, the example cited in David Kraemer, *Reading the Rabbis: The Talmud as Literature* (New York, Oxford: Oxford Univ. Press, 1996) 144–45. Let me be clear here that I do not mean to say that aggadic elements of the Talmud were entirely overlooked or devalued prior to being “rediscovered” in modern scholarship, only that attention to these elements was sufficiently uncommon as to be noteworthy when it did appear.

² Such as: Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley, Los Angeles,

elements of a talmudic discussion often are as much commentary to mishnaic rulings, and in as many varied ways, as are legalistic discussions of the *mishnah* under consideration. As Jeffrey L. Rubenstein puts it, the redactors of the Talmud “not only juxtapose stories with the relevant Mishna, but use the stories to illustrate, question, explain, or protest Mishnaic rulings.”³ Attention to talmudic narrative, or better, to the interplay of narrative and its halakhic context, is thus an essential element in addressing any questions of how the crafting of this discourse functioned as a literary practice among those who composed its materials and those who arranged, adapted, and redacted those materials, that is, those who “authored” talmudic *sugyot*.

This is particularly so in light of another significant trend in the study of rabbinic literature, that is, the turn to reading talmudic (and other rabbinic) literature as an expression — the primary expression available to us — of the processes by which Rabbis constructed their particular vision(s) of Jewish culture and practice. Numerous works of recent scholarship have explored how rabbinic discourse performs ideological and cultural work in a variety of realms, such as establishing and maintaining communal and religious boundaries between Jew and non-Jew, defining the role of Rabbis within the community, or — as has been one of my own scholarly interests — constructing the confines of gender roles, gender relations, and sexuality.⁴ In such studies, then, while analysis of rabbinic legal thought and legislation remains a significant contribution, a fuller picture is more likely to emerge when the full range of rabbinic modes of discourse is taken into consideration. As Daniel Boyarin has written, “I assume that both the halakha and the aggada represent attempts to work out the same cultural, political, social, ideological, and religious problems.”⁵ That is, when we are able to tease out similar underlying issues manifesting themselves in both legal discourse and in narrative accounts, or when legal and narrative materi-

Oxford: Univ. of California Press, 1993); Ofra Meir, *The Poetics of Rabbinic Stories* (Tel Aviv: Sifriat Poalim, 1993) (Heb.); Aryeh Cohen, *Rereading Talmud: Gender, Law and the Poetics of Sugyot* (Atlanta, Ga.: Scholars Press, 1998); Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore and London: The John Hopkins Univ. Press, 1999). This is, of course, a partial list; Rubenstein's extensive bibliography is highly recommended to readers who wish to pursue the literature further.

3 Rubenstein, *Talmudic Stories*, 267.

4 Again, for a few examples that hardly constitute a comprehensive list, see: Boyarin, *Carnal Israel*; David Kraemer, *Reading the Rabbis*; Shulamit Valler, *Women and Womanhood in the Talmud*, trans. Betty Sigler Rozen (Atlanta, Ga.: Scholars Press, 1999); Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford, Calif.: Stanford Univ. Press, 2000); Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: The John Hopkins Univ. Press, 2003); Eliezer Diamond, *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture* (Oxford, New York: Oxford Univ. Press, 2004).

5 Boyarin, *Carnal Israel*, 15.

als together are interwoven to create discourse around a particular issue, then we can begin to identify in the interchange between the modes the cultural tensions around that issue that concerned the Rabbis. The beginnings of an answer to the question “what ‘cultural work’ (as, for example, about gender and/or sexuality) is being done in this *sugya*?” can only be found in examination of all its individual parts, both legal and narrative, and the interaction(s) between them.

Indeed, I began the research that led to this article with the intent of developing just such a reading of the rabbinic laws of *yihud* – prohibitions on secluded contact between men and women – with the aim of uncovering and explaining the underlying assumptions about gender and sexuality which they construct and encode.⁶ In the course of that research, I encountered the extended and complex Babylonian *sugya* of *b.Qidd.* 80b–81b, and thus the origins of this article. More particularly, I encountered the series of stories which are integrated into the *sugya* – stories unique to the Babylonian discussion, though much of its other (predominantly legal) materials on the topic are shared with the parallel discussion in the Palestinian Talmud (*y.Qidd.* 4:11, 66c). In light of what has been already said above, having such source materials to work with should be considered a boon for a scholar (such as myself) interested in unpacking the cultural workings of rabbinic – or in this case, amoraic Babylonian rabbinic – culture. Shulamit Valler, for example, suggests two basic premises that in her view make talmudic story collections such as this one particularly fruitful sources for work of this sort:

- a. The collections of stories we have before us in the Talmud contain authentic nuclear material that has been worked over and edited.
- b. This reworking and editing has been done in the service of specific attitudes and approaches.⁷

In the course of my work, however, I found myself grappling with great difficulty to come to a clear and consistent explanation of these stories, their place within the *sugya*, and their relationship to the halakhic material in which they are embedded. This led me to broaden the scope of my inquiry from this text and its components, to the methods by which I had hoped to analyze them.

Culture is a complex organism, and the work done by its constituent members as they attempt to construct, interpret, influence, and live within it can be of many kinds. Thus Boyarin writes, “cultural phenomena can be read in several different ways; the more complex the phenomenon, the more numerous the possibilities for reading. The texts of rabbinic Judaism and the construction that

6 See the Feminist Sexual Ethics Project at the Brandeis University website for my brief introduction to the topic of *yihud* laws and the rabbinic texts in which they are set out: <http://www.brandeis.edu/projects/fse/Judaism/juda-essays/juda-ess-yichud.pdf/>, Aug. 2004.

7 Valler, *Women and Womanhood*, 3.

we put on the whole are therefore ambiguous, necessarily so.”⁸ Indeed, it is this concept of ambiguity that I want to emphasize in this article. In what follows, I will argue, and demonstrate through an analysis of the *sugya* in *Qiddušin*, that readings of talmudic literature – narrative and legal – need to account for the presence of ambiguity as a part of literary creation. Moreover, doing so necessarily (that is, both perforce and as a needed corrective) complicates the question of how literary approaches to reading talmudic *sugyot* can contribute to the investigation and study of rabbinic culture and cultural construction.

Indeed, it is well accepted by now in the study of literature that reading itself is not a simple or straightforward process. Literary texts (and other texts more generally) are marked by gaps, points throughout the text at which information – as for example about the connections between plot elements, or about characters and their relations and motivations – is not given explicitly, so that possible interpretations must be guessed at or inferred by the reader. That is, the reader is a highly active party to the process of reading and making meaning of what is read. Acknowledging this process, however, raises complicated questions about how such gaps are to be filled, and how proposed gap fillings – that is, interpretations of the text – are to be evaluated. The process of reading and gap filling is thus often described as one of creating and testing – and sometimes discarding – hypotheses about the text’s meaning.

As should be evident from the citation from Boyarin just above, I do not mean to suggest that scholars of rabbinics and rabbinic culture are unaware of the complexities of rabbinic texts or the task of interrogating their underlying ideological assumptions and commitments. Nonetheless, just as many literary theorists appeal to the concept of “plausibility” – so that an interpretation may be evaluated based on how plausibly it “organizes the maximum of elements in the most cohesive patterns”⁹ – so too many scholars of rabbinic literature propose that with sufficient methodological rigor, some reliable assertions may be made about a text’s meaning and/or its underlying ideological concerns. Rubenstein suggests that when scholars bring the tools of modern scholarship – such as source criticism, redactional criticism, and literary analysis – to their readings, “Analysis of talmudic stories along these lines opens a window to the cultural world of the redactors . . .”¹⁰ In a similar vein, while describing var-

8 Boyarin, *Carnal Israel*, 21.

9 Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington: Indiana Univ. Press, 1987) 189. Sternberg’s work, particularly the chapter from which this citation is taken (chap. 6, “Gaps, Ambiguity, and the Reading Process,” 186–229), is widely recognized as one important early articulation of the concept of gaps and their role in the reading process.

10 Rubenstein, *Talmudic Stories*, 2. See also 32–33: “Finally, let me address the matter of *objectivity*. A perennial question regarding any interpretation of literature . . . is the extent to which it is

ious feminist/gender-focused approaches to the study of rabbinic literature, Elizabeth Shanks Alexander writes "Another strategy focuses on questions that *can* be resolved by examining the evidence of male-authored texts, such as the legal status of women in rabbinic literature and the construction of gender identities in rabbinic culture."¹¹ As will be seen just below, however, Alexander herself has since raised some important questions about the presence of ambiguity as a literary technique in rabbinic writing. The difficulties of the *sugya* under consideration here raise some further questions regarding the interpretive methods common to study of this type.

Again, essential to this discussion is the possibility, or even likelihood, that a reader will test multiple hypotheses over the course of a reading. As each piece of the text is encountered in turn, it may present new gaps that must be filled, and/or provide data that potentially fills previously experienced gaps. In the course of reading the reader may begin with one hypothesis, only to find its adequacy challenged as new information is encountered, leading to the development of a new hypothesis. However, as Meir Sternberg has demonstrated, there are moreover instances in which two or more hypotheses might both (each) continue to prove capable of providing plausible interpretations of the text in question throughout and even to the end of the reading process: "The narrative deliberately creates this impossibility of deciding between the two alternative systems of gap-filling. It demands that both be maintained simultaneously, and thus profits from their tense interaction."¹²

A few scholars have begun to investigate the presence and/or effect of such ambiguity in rabbinic writings.¹³ Notably, in a recent article, Alexander has

'objective' and replicable, or 'merely' the subjective reading of the interpreter. I am not claiming that my readings are the only valid readings of these stories, nor that they uncover the absolute meaning as opposed to the misinterpretations of others. . . . At the same time, I do not share the extreme skepticism that all readings are equally good on the grounds that no objective standards exist. . . . According to the criteria of academic criticism at least (which are ultimately conventional), an interpretation should be judged on how well it accounts for literary characteristics, analyzes conflicts, appreciates motifs and themes in their cultural contexts, avoids anachronism and constraining theological dogmas, and satisfies shared assumptions. . . . In the end the measure of a good reading is whether it persuades the reader and advances his or her understanding of the text."

11 Elizabeth Shanks Alexander, "The Impact of Feminism on Rabbinic Studies: The Impossible Paradox of Reading Women Into Rabbinic Literature," in Jonathan Frankel, ed., *Jews and Gender: The Challenge to Hierarchy* (New York: Oxford Univ. Press, 2000), 103; emphasis in the original.

12 Sternberg, *The Poetics of Biblical Narrative*, 201–2.

13 For example, explicitly following up on the work of Sternberg and others, Boyarin has explored the way in which points of ambiguity in biblical texts create midrashic indeterminacy, the phenomenon in which midrashic texts present multiple and even contradictory interpretations of the biblical text without apparently choosing between them: Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Bloomington & Indianapolis: Indiana Univ. Press, 1990).

brought these ideas about ambiguity to a discussion of reading and interpreting materials in the *Bavli*; she writes, "I believe that these same theories about how ambiguity functions within texts can help us identify literary qualities in the dense, argumentational portions of the *Bavli*."¹⁴ That is, she argues, creating such ambiguous moments is part of the compositional strategy of those who authored/redacted Babylonian *sugyot*: "the *Bavli* constructs such moments as part of its literary craft . . . the logically awkward moment in the *sugya* . . . is the *intended* outcome of the *Bavli*'s composition."¹⁵ In order to illustrate this claim, she analyzes the means by which the author/redactor of a Babylonian *sugya* (*b.Sukkah* 51a–b) reworks materials from an earlier discussion in the *Yerushalmi*, in order to draw out a moment of ambiguity in the portrayal of the *yeṣer hara*¹⁶, the Evil Impulse. That is, in Alexander's description, the *Bavli* deliberately exhibits and actively constructs moments of ambiguity in much the same way as midrashic texts do. Just as ambiguity in midrashic works is elicited by (more or less) ambiguous moments in the reading of biblical texts, so too in the *Bavli* "ambiguity in antecedent texts is a key factor in the production of new texts."¹⁶

Indeed, it is this concept of ambiguity that provides a key for reading and interpreting the *sugya* of *b.Qidd.* 80b–81b. The difficulty I experienced in my initial encounters with this passage, I will demonstrate, is a function of the deeply ambiguous manner in which it and other talmudic texts were crafted. My reading supports Alexander's observations, but also begins to open questions about their broader implications. The *sugya* examined here is open to multiple, coexistent, and not necessarily reconcilable means of reading, gap-filling, and interpretation. What is more, these varying interpretations carry with them in turn different, and again, coexistent yet potentially contradictory implications for eliciting and explicating the cultural work done by the *sugya* as it constructs its ideas about men, women, and sexual desire. It is this latter point that holds the prospect of broader significance: if we wish to investigate the cultural work done by this *sugya*, and by extension talmudic literature more broadly, then we must actively account for ambiguity in our reading practices.¹⁷

14 Elizabeth Shanks Alexander, "Art, Argument, and Ambiguity in the Talmud: Conflicting Conceptions of the Evil Impulse in *b.Sukkah* 51b–52a," *HUCA* 73 (2002) 99–100.

15 Alexander, "Art, Argument, and Ambiguity," 100; emphasis in the original.

16 Alexander, "Art, Argument, and Ambiguity," 131.

17 It is important to add here that I do not mean to say that a reader/interpreter should not ever choose (if s/he is open and honest about that choice) to present and advocate for a particular reading of a text on a particular occasion for a particular reason, despite the fact that other plausible readings of that text exist. See, for example, my own reading of the final story of this *sugya* elsewhere: "Heruta's Ruse: What We Mean When We Talk About Desire," in Danya Ruttenberg, ed., *The Passionate Torah: Sex and Judaism* (New York and London: New York Univ. Press, 2009) 229–44.

The final step before turning to my textual analysis is to delineate how I have chosen to define the boundaries of the text under consideration.¹⁸ Aryeh Cohen defines the *sugya* as “the primary context of all its parts – attributed and unattributed statements, aggadot, maasim, prooftexts, *et al.* Its parameters are established both structurally and intratextually, and thematically.”¹⁹ Marking the boundaries of a *sugya* is an unavoidably subjective process, and the definition of a *sugya* inescapably circular, but again in Cohen’s words, “there is no better option.” I have therefore chosen to read as a *sugya* that part of the talmudic text that comments on, or follows from commentary to, the opening line of *m. Qidd.* 4:12; I leave off my analysis at the point at which the talmudic text takes up a different, though admittedly related issue, that of *yihud* with family members.²⁰

- 18 In this article I am working from an assumption that rabbinic stories were fashioned and adapted to the needs of the varying contexts in which they were placed, and that by the same token, context is an important determinant of possible meanings. Thus, I am in agreement with both Rubenstein and Aryeh Cohen (among others), who argue for the local context of a story or other discursive element as the starting place for analysis of talmudic literature: “. . . not only are text, context, and interpretation interrelated, but the redactors tailored the texts of stories to suit the literary contexts in which they placed them. Redactors were as much authors or storytellers as compilers, so the interpretation of a story should not be pursued independently of the literary context they chose. . . . It is untenable to claim that the process of redaction did not affect the text of the stories to any significant degree, that rabbinic stories were originally told in another setting . . . and later incorporated into talmudic passages without change. No stable meaning exists without a literary context, and in the case of the BT, the redactional process shaped the story in relation to that context.” Rubenstein, *Talmudic Stories*, 14. Similarly Cohen: “All this leads to the importance of starting any understanding of Talmud with the *sugya*.” Cohen, *Rereading Talmud*, 147 (see also 121 and 131).

This is not to deny that materials encountered in a talmudic passage also exist in a larger context of other talmudic materials, other rabbinic writings, biblical, post-biblical, extra-biblical, and other Jewish writings, and writings of other groups with whom Jews in the Roman and Sasanian empires might have had contact, that is, a world of intertexts. Knowledge of these intertexts too can suggest additional potential interpretations to the reader (see, for example, Cohen, *Rereading Talmud*, 31). In what follows, I will focus on reading the *sugya* as my primary point of departure, preferring to concentrate attention on the points of ambiguity within the *sugya*. However, where intertexts can provide particular insight or contrast, I will make reference to them in the body of the article or in the notes.

- 19 Cohen, *Rereading Talmud*, 148.

- 20 It may be noted that the common printed edition of the Talmud also visually marks a break at this point, by means of a colon and a new citation of another snippet of the *mishnah*, thereby designating a new discussion (but see also *b. Qidd.* 34a, where an argument could be made that an unnecessary break has been inserted into an ongoing *sugya*).

See, however, the works of Judith Hauptman and Ishay Rosen-Zvi, both of whom choose to include in their analyses materials relevant to the entire *mishnah* and to one or more of the following *mishnayot*: Judith Hauptman, *Rereading the Rabbis: A Woman’s Voice* (Boulder, Colo., Oxford: Westview Press, 1998) 30–49, and Ishay Rosen-Zvi, “The Evil Inclination, Sexuality, and the *Yihud* Prohibitions: A Chapter in Talmudic Anthropology,” *Te’oriah uviqoret* 14 (1999) 55–84 (Heb.).

PROPER MEN AND UNRESTRAINED MEN

A man may not be alone with two women, but one woman may be alone with two men. R. Shimon says: Even one man may be alone with two women at a time when his wife is with him, and he may sleep with them (*in one room*) in an inn, because his wife will guard him. A man may be alone with his mother and with his daughter, and he may sleep with them with flesh touching. And if they had become grown, this one sleeps in her clothing and this one sleeps in his clothing. (*m.Qidd.* 4:12)²¹

Motivating these laws – and simultaneously being constructed by them – is the assumption that if a man and woman, or one man and two women, are secluded together, the risk of inappropriate sexual activity is always present.²² The following paragraphs in the Mishnah, and parallel passages in the Tosefta, suggest various controls and limitations on these sexual urges, such as whether a man is married, the proximity of his wife if he has one,²³ particularly close degrees of consanguinity, and age; similarly, Jewish men are not suspected of having desire for, or at least committing acts of, homosexual intercourse or bestiality.

An immediate gap is encountered here in the tannaitic layer of the text, when the reader must interpret the gender-differentiated rules presented in the Mishnah and Tosefta, most notably the ruling that one man may not be alone with two women, while one woman may be alone with two men.²⁴ The *Bavli* (but not the *Yerushalmi*) opens directly with this question, and cites a tradition

21 All translations are my own. Where necessary, I have added explanatory words or phrases in brackets and italic type. Translation of *b.Qidd.* 80b–81b is based on the common printed edition of the Talmud; it is this version of the text that has been most frequently used in other analyses of this passage and/or some of its constituent parts. There are, however, several known manuscripts and early recensions that include this passage; particularly significant textual variants will be recorded in notes, and some will be discussed in more detail in the analysis below.

22 As the Toseftan parallel to this passage (*t.Qidd.* 5:9) and other tannaitic texts demonstrate: see, for example, *m.Ketub.* 1:5, *m.Git.* 7:4, 7:7, and 8:4, and *m.ʿAvod. Zar.* 2:1; *t.Ketub.* 1:4 and 3:2, *t.Git.* 5:4 and 5:8, and *t.ʿAvod. Zar.* 3:1–2. This assumption, of course, both proceeds from and constructs other significant assumptions about gender and desire and the like; see Miriam Peskowitz, *Spinning Fantasies: Rabbis, Gender, and History* (Berkeley, Los Angeles, London: Univ. of California Press, 1997) chap. 2, “Daily Labors,” 49–76.

23 Hence also the particular attention to the unmarried man in these Mishnah passages, as noted by Rosen-Zvi, “The Evil Inclination, Sexuality, and the Yihūd Prohibitions,” 68. On marriage as protection against sin, see also Boyarin, *Carnal Israel*, 138–42 and Isaiah M. Gafni, “The Institution of Marriage in Rabbinic Times,” in David Kraemer, ed., *The Jewish Family: Metaphor and Memory* (New York, Oxford: Oxford Univ. Press, 1989) 20–21; similarly, see *b.Qidd.* 29b–30a, which valorizes marriage as protection against sin/sinful thoughts.

24 See, for example, Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York, Oxford: Oxford Univ. Press, 1988) 159, Peskowitz, *Spinning Fantasies*, 57, Hauptman, *Rereading the Rabbis*, 33 (similarly 35–36 and 38).

from the mishnaic period in answer: "What is the reason? It was taught by the school of Eliahu: Women are light-headed."

The text does not, however, further define what is meant by "light-headed."²⁵ In fact, most of the *sugya* will concentrate its attention on discussions of masculine sexuality.²⁶ Nor does the Mishnah's broad, categorical ruling rest easy in this *sugya*. In both the *Bavli* and *Yerushalmi* (indeed, this is where the latter begins its discussion), the mishnaic rule that two men may be alone with one woman without fear of sexual transgression is qualified and its application limited:

R. Abin said: Regarding what are these words said? Regarding proper men, but regarding (*morally*) unrestrained men, she may not be alone even with one hundred men. (*y.Qidd.* 4:11, 66c)

"But one woman [may be alone with two men]." Rav Yehuda said, Rav said, "They did not teach (*this rule*) except regarding proper men, but regarding unrestrained men, even with ten, no." (*b.Qidd.* 80b)

Some men are proper and trustworthy in their sexual behavior, others are not, and different standards must apply. However, what is presented in the Palestinian Talmud without any further explanation or contestation becomes in the Babylonian Talmud the opening to the extended *sugya* of both legal and narrative elements. That is, the Babylonian discussion is generated by such questions as: what is meant by proper and unrestrained men, and where do the boundaries between them lie?

The introduction of the distinction between proper and unrestrained men is immediately paired in the Babylonian Talmud with a narrative cryptic in its lack of detail: "It happened once that ten men carried her out on a bier. Rav Yosef said, 'Know that ten people will join together and steal a beam and are not ashamed of each other.'" We are given no details such as where and when this event took place, who the participants were, what happened next. It is perhaps not surprising, then, that medieval commentators supplied an elaboration in which ten men staged a mock funeral/burial of a (married!) woman

²⁵ There is only one other instance in the Babylonian Talmud in which this exact phrasing appears ("women are light-headed"), in a context that is decidedly not sexual; in *b.Šabb.* 33b, it describes the presumed likelihood that a woman will not be able to withstand torture. The phrase may thus suggest a general weakness of will that includes, but is not limited to, susceptibility to sexual inducements.

²⁶ This attention to male experiences of sexual desire is not the only possible approach to the laws of *yihud*. Note that elsewhere (*b.Sanh.* 21a–b; see also *b.ʿAvod. Zar.* 36b) discussion focuses on women and the (supposed) benefits of the law to them in protecting them from male sexual aggression. Although one could claim that similar assumptions about male sexuality (as dangerous and in need of control) are at work in both those passages and in *b.Qidd.*, the primary focus in each – on the male need/desire to be protected from sin, or on the female need to be protected from sexual assault – is quite different. But see also Hauptman, *Rereading the Rabbis*, 49, 54.

so that they could collectively have a sexual encounter with her.²⁷ In any case, the presentation of the story and its context suggest that it is cited here to illustrate in some way the principle just articulated — that is, there is a distinction to be made between proper and unrestrained men, and such a distinction is meaningful enough to influence legal practice. And yet Rav Yosef's comment that follows complicates this conclusion, for it carries in it the suggestion that it is the very number of people involved that allows for improper behavior. Perhaps the very presence of the group, exerting something like what we would term peer pressure, might cause even a "proper" man to shed his inhibitions, and thereby *become* an "unrestrained man."

What follows is a first attempt, by means of legal reasoning rather than narrative, to define "proper men." This is done by reference to a *mishnah* in *Soṭah*, regarding the woman subjected to trial by ordeal because her husband suspects, but has no proof, that she has committed adultery.²⁸ In describing the process of taking the wife to the Temple in Jerusalem, where the trial is administered, *m.Sotah* 1:3 specifies that "Two scholars are sent with him (*the husband*), lest he have sex with her on the way" — an act that would vitiate the effectiveness of the trial. Implied in the juxtaposition of this rule and Rav's limitation of our *mishnah*, then, is a rather restrictive definition of "proper men": stipulating that the chaperones must be scholars could mean that only scholars qualify as "proper" men who can be trusted in the presence of the wife. Yet an alternate reason for sending scholars (as opposed to "ordinary" men) is then put forth, and the proposed association between the two mishnaic sources is deflected. At this point, a second limitation of the *mishnah*'s permission for two men to be alone with one woman is offered, also in the name of Rav Yehuda citing Rav:

Rav Yehuda said, Rav said, "They did not teach (*this rule*) except (*when they were*) in the city, but on the road (*it is not permitted*) until there are three, lest one of them needed to urinate and it would happen that one is alone with a forbidden woman."

Here too the case from *m.Sotah* is invoked as potential support for this new rule (two scholars plus the husband equals three men), but the attempt is again deflected. It is immediately after these discussions that the following story appears:

Rav and Rav Yehuda were walking on the road; a particular woman was walking ahead of them. Rav said to Rav Yehuda, "Lift your feet before Gehenna (*walk faster; pass the woman*)."

27 See, for example, the commentary of R. Shlomoh Yitshaki (Rashi).

28 According to rabbinic law, this can only happen after the husband has warned the wife against contact with a particular man, and there is evidence that she has nonetheless been secluded with that man since being warned (note, therefore, the thematic connection between this area of law and the laws of *yihud*).

"But it was Master himself who said of proper men that it is acceptable!" He (Rav) said to him (Rav Yehuda), "Who said that "proper men" (*refers*) to ones such as me and you?"²⁹ Rather, to ones such as who? Such as Rav Ḥanina b. Pappi and his fellows.³⁰

One obvious question for the reader is how this story of Rav and Rav Yehuda is connected to one or both of the limitations that they offer to the *mishnah*. Shulamit Valler suggests that there is a "clear" connection between the situation described in the story and Rav's *second* limitation, his ruling that when travelling on the road, a ratio of three men to one woman is necessary: he and Rav Yehuda are only two men, and thus should not be on the road in the presence of the woman walking ahead of them.³¹ Yet the two Rabbis explicitly invoke language in their exchange that echoes Rav's *first* limitation of the *mishnah*, that is, that even two men may be alone with one woman only if the men are "proper men." That is, as in the legal discourse that preceded it, so too this story can be read as an attempt to determine how "proper" men are to be defined. In this case, the definition would be most severely limited; not even Torah scholars (other than perhaps a few extraordinary exceptions) would be above suspicion. The story relates, after all, that the very Rabbi who proposed (so far as the Babylonian tradition is concerned) the distinction between proper and unrestrained men refuses to count himself or his disciple in the former category.

It is therefore not surprising that the relationship between Rav's actions as described in the story and the legal dicta assigned to him was already recognized as a significant gap in the text and much debated among medieval commentators and legal codifiers: is Rav's refusal to include himself and his disciple within the category of "proper men" commentary on the legal definition of what constitutes "proper," or perhaps rather a demonstration of humility, piety,

29 There are a number of variant readings of this statement found in manuscripts and medieval commentaries. Nonetheless, the force of the question and the answer remain functionally the same for the purposes of the discussion below.

30 As Hauptman notes, the comment designating "Rav Ḥanina b. Pappi and his fellows" as the exemplars of "proper" men cannot be attributed to Rav, who lived several generations prior to Rav Ḥanina b. Pappi; rather it must be a later, perhaps editorial, comment on the story. Hauptman, *Rereading the Rabbis*, 57, n. 28.

The reference is commonly assumed to be to a series of stories appearing earlier in *b.Qidd.* 39b–40a, in which Rav Ḥanina b. Pappi and two other Rabbis successfully resist the sexual advances of (probably Roman) women identified by the title of "*matrona*." The context, circumstances, and concerns of those episodes are, not surprisingly, rather different than those of our passage. How the person(s) who brought this reference to our location might have meant to relate these episodes to the discussion of defining "proper" men for the purposes of *yihud* is, then, yet another point open to interpretation. But see also n. 47 below.

31 Shulamit Valler, *Women in Jewish Society in the Talmudic Period* (Israel: Hakibbutz Hameuchad Publishing House Ltd., 2000) 27–28 (Heb.). A similar point is noted in the early modern commentary of Samuel Edels (Maharsha).

or even hyperbole?³² The impulse of most modern interpreters has been to read the legal saying and the narrative as standing apart from each other. The connection between the two still must be explained, however, and here the result is often a blurring of the very boundaries that the interpreter intends to delineate. One example of this quandary (of several I could have presented) can be seen in the analysis of Judith Hauptman:

... ordinary men and even rabbis, who are ordinary men but are assumed to be more in control of themselves because of their commitment to mitzvot, are not immune to visual stimulation. They, too, need to remove themselves from the situation in which they find themselves, *even if Jewish law allows it*.³³

What "Jewish law allows" is not to be determined or influenced by the story. But ambivalence on this point is difficult to avoid. Hauptman's reading continues: "Despite the *mishnah's* ruling, the presence of a second man seems to be no guarantee that the first will not attempt to pursue and seduce an unattended woman, even if he is an individual who takes the rules seriously. . . ." That is, at the same time her reading deems the *mishnah's* rule, albeit with Rav's limitation of it, to be "the law," she must also immediately allow for this law's utter ineffectiveness. We might ask: at what point does the meaning and significance of declaring something to be "the law" dissolve, if even the lawmakers cannot bring themselves to observe the law they have made?

I emphasize this conundrum because it highlights a significant corollary to the already identified difficulty involved in defining "proper" and "unrestrained" men. That is, not only may this story be read in different ways as to the statement it makes about defining "proper" men, but also how one reads that statement may have legal ramifications. The story thus marks a second(ary) theme that will recur in other stories and materials as the *sugya* proceeds: do the narratives in some way demonstrate and/or complement the legal materials, or do they stand in some other relationship to them?

The significance of this question is apparent when one compares responses

32 Thus, for example, Maimonides (*Mishneh Torah*, *Hilkhot ʿissurei bi'ah* 22:8; and see the commentary of Vidal Yom Tov of Tolosa, *Maggid Mishneh*, thereto) and R. Yosef Karo (*Shulḥan ʿarukh*, *ʿeven haʿezer* 22:5) both rule stringently. R. Jacob b. Asher (Tur, *ʿeven haʿezer* 22) and R. Nissim b. Reuben Gerondi (Ran; commentary to the halakhic digest of R. Yitshak Alfasi) both explicitly argue against the position of Maimonides. Similarly, in their talmudic commentaries, both R. Yom Tov b. Abraham Ishbili (Ritba) and Menaḥem b. Solomon Me'iri interpret the category of "proper" men broadly, to include the ordinary Jewish man not otherwise already suspected of improper behavior.

33 Hauptman, *Rereading the Rabbis*, 41; emphasis in the original. For other examples, see David Halivni, *Sources and Traditions: Nashim* (Tel Aviv: The Dvir Publishing House, 1968) 717 (with attention to n.7), or Valler, *Women in Jewish Society*, 27–28.

to the story just discussed with those to the following episode in which Rav Bibi visits Rav Yosef:

Rabba said “If her husband is in town, we do not worry about seclusion.” Rav Yosef said, “If a doorway is open to the public domain, we do not worry about seclusion.” Rav Bibi went to the home of Rav Yosef. After they dined, he said to them “Take away the ladder from under Bibi.” But thus Rabba said, “If her husband is in town, we do not worry about seclusion!” Rav Bibi is different, because she was his close friend and was familiar with him.

While the story of Rav and Rav Yehuda is frequently read as an example of going beyond strict legal requirements, most later codifications of Jewish law derive actual halakhic rules from this episode: a. when there is a measure of familiarity between a particular man and woman (as for example, if they grew up together or are related to each other), situations of close contact that might ordinarily be permitted are instead forbidden; b. the presence of a woman’s husband in town can serve to relax the application of *yihud* laws.³⁴ In this case, law is intertwined into the very telling of the story – or perhaps the story is intertwined into a discussion of the law – so that the boundary between them is blurred, if not entirely removed.

The ladder linking (or prevented from linking) the upper and lower stories of Rav Yosef’s house is also a connection between stories of the *sugya*, as it reappears in a narrative about Rav Amram (although some legal material intervenes).³⁵ In this next story, the *sugya* appears to move in yet another direction in relating the legal requirements of *yihud* laws to the events of the narrative, perhaps even creating a challenge to the very concept of legislating sexual desire and behavior:

There were some female captives brought to Nehardea. They took them to the house of Rav Amram Ḥasida. They took the ladder out from under them.³⁶ As one passed by, a light fell in the opening. Rav Amram took the ladder – which ten men could not set up – and set it up alone,³⁷ and started to ascend. When he reached the halfway point of the ladder, he stopped

34 See, for example, *Mishneh Torah*, *Hilkhot ʿissurei biʿah* 22:12, and *Shulḥan ʿarukh*, *ʿeven haʿezer* 22:8.

35 Valler in particular has argued that these stories are tightly linked: Valler, *Women in Jewish Society*, 42. Textual variants in early manuscripts and recensions suggest, however, that some of the linguistic links between the stories are late additions to the text; see the next two notes.

36 This sentence does not appear in the Vatican and Munich manuscripts, nor in the Spanish recension. Nonetheless, replacing the ladder appears in all versions (see next note), meaning the ladder must have been removed previously.

37 The phrase “which . . . alone” does not appear in the Vatican or Munich manuscripts, or the Spanish recension, all of which read “he placed it” instead.

himself and raised his voice, "A fire at Rav Amram's!" The Rabbis came. They said to him, "You have shamed us!" He said to them, "Better that you are shamed at the home of Rav Amram in this world and not be shamed by him in the World-to-Come." He adjured it (*some texts add: the Evil Inclination/his Inclination*³⁸) to leave him; it left him as a pillar of fire. He said to it, "See, you are fire and I am flesh, but I am better than you."

Rav Amram is a man whose name declares him to be *Hasida*, the Pious (and thus, one might think, proper), and he is also described as having clearly observed the law as set out up to this point in the *sugya*. Yet he experiences, acts upon, and nearly succumbs to illicit sexual desire. Similarly concerns are present in a pair of parallel stories immediately after this:

R. Meir used to scoff at those who committed sin. One day, Satan appeared to him as a woman, on the other side of the river. There was no ferry. He grasped the rope and was crossing over; when he reached the halfway point of the rope, he (*Satan*) released him. He (*Satan*) said, "If it were not that they decreed in the heavens 'Beware of R. Meir and his learning,' I would have valued your life at two meahs (*a small coin*)."

R. Akiva used to scoff at those who committed sin. One day, Satan appeared to him as a woman, at the top of a palm tree. He grasped the palm tree and was ascending; when he reached the halfway point of the palm tree, he (*Satan*) released him. He (*Satan*) said, "If it were not that they decreed in the heavens 'Beware of R. Akiva and his learning,' I would have valued your life at two meahs."

The protagonists of these episodes are two highly prominent and respected Rabbis of the mishnaic period, although the stories themselves are related in Babylonian Aramaic and thus are most likely of later origins. Neither Rabbi appears to have deliberately, or even inadvertently, placed himself in a situation of impermissible proximity to a woman. It is Satan who suddenly appears to each of them, presumably from previous invisibility. Yet each is overwhelmed and unable to resist acting at the moment sexual temptation appears. As in Rav Amram's case, each has reached halfway to his forbidden goal before his progress is halted.

WHERE DOES RAV AMRAM'S LADDER LEAD?

Up until this point, the reader has been presented with a series of interrelated textual gaps that call for interpretation: Is "proper men" a meaningful category, and if so, who belongs to it? Is male sexuality amenable to personal and/or legal control, and if so, what are the necessary boundaries that must be set? Do the

38 See Vatican 111 ("the Evil Inclination") and the Spanish recension ("his Inclination").

legal and narrative elements of the *sugya* work together to answer these questions, and if so, what answers do they give? Alternately, do the various components of the text work at cross purposes, and if so, to what end(s)? No adequate discussion of the cultural work regarding gender and sexuality that is being done in this passage can proceed without considering these questions. There is reason to suggest, however, that the text is constructed in such a way that it will not be possible to form a single hypothesis that interprets and integrates the material examined so far – or, more accurately, more than one such hypothesis can be constructed, each presenting an equal claim to plausibility, and each faced with equal challenges to that plausibility:

By providing sufficient clues to shake both hypotheses, the text discourages the interpreter from committing himself to either; however plausible it may look at a certain moment, before long something always turns up to discredit it in favor of the other. . . . The reader who endorses either hypothesis will be driven to make a narrow and tendentious selection of materials from the text, in disregard of all clues pointing the other way.³⁹

As would be expected, moreover, these different hypotheses will have significantly different implications for interpretations of the cultural work produced by the talmudic passage.

One possible reading is that the stories complement the laws of gender segregation; they are meant to explain and naturalize the practice of these laws and the need for them. A plausible argument can be made that their function is to create what Miriam Peskowitz describes (in a different context) as “that vague sense of the everyday known as an ‘ethos,’ an everyday in which halakah comes to seem natural and comes to be nearly self-enforced.”⁴⁰ The stories would not need to conform to the halakhic demands of the legal portions of the *sugya* to serve this function, and indeed might be read as being exaggerated for effect. Telling stories about the overwhelming power of male sexual desire, from this perspective, can be understood as a means of bringing the halakhic discussion to life; through the narrative, the need for the behavioral limits set out in the law is made real by the example of great Rabbis, with the intent that the law become internalized also by the audience of the *sugya* and the community at large.

In this light, we might also look at the recurring theme, found in both the legal and narrative material of the *sugya*, of shame as a form of social control. Thus, we should recall Rav Yosef’s observation that “ten people will join together and steal a beam and are not ashamed of each other.” Shaming even of recognized scholarly and pious men is a repeated element of the narratives; lack of sexual self-control will lead to shame, and no man should presume himself

39 Sternberg, *The Poetics of Biblical Narrative*, 225.

40 Peskowitz, *Spinning Fantasies*, 133.

immune. The rhetorical effect of these tales would then be to threaten the (male) audience with similar shame as a form of social control and by that means encourage observance of the law. The (male) reader or listener would absorb the message that if even great Rabbis can be so shamed, all the more himself; only diligent observance of the law, even going beyond the measure of the law, could protect him from being similarly shamed.⁴¹

On the other hand, the stories presented here can also equally plausibly be seen as an internal critique or even a destabilization of the halakhic materials, advancing a portrayal of male sexuality as fundamentally unsusceptible to being bound by legislation or other means of social control. Discussing the relationship of another narrative passage elsewhere (a story about Rav Reḥume, *b. Ketub.* 62b) to its legal context, Boyarin writes, "... the way that the entire story is presented provides rather a strong condemnation of the practice at the same time that it is overtly supporting it."⁴² An argument could be made that something similar is occurring in the stories surveyed so far. The stories here subtly subvert the laws of *yihud*, by repeatedly illustrating that legal/behavioral controls are not effective to curb men from acting on their sexual impulses, even those men who could be expected to be most committed to such regulations.⁴³

In this reading, interpretative attention could focus on the role played by the Evil Inclination and Satan in these stories. These two figures/concepts might further be identified with each other in this reading – following, perhaps, Resh Lakish's claim (*b. B. Bat.* 16a) that "Satan is the Evil Inclination is the Angel of Death" – and/or the Inclination might be particularly identified with *sexual* desire (as opposed to a more broad human inclination after the forbidden). That is, the *sugya* can also be read as a discourse on the overwhelming power of the Evil Inclination in the realm of male sexuality, and a man's near (or total) powerlessness to confront and overcome it.⁴⁴ Also significant to a reading of this sort is Rav Amram's expulsion of his sexual desires, identified in some manuscripts

41 On the social functions of shame in rabbinic culture and, more particularly in constructions of sexuality and gender within that culture, see also Michael L. Satlow, "Shame and Sex in Late Antique Judaism," in Gay L. Byron and William S. Love, eds., *Asceticism* (New York, Oxford: Oxford Univ. Press, 1995) 535–43; similarly Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: The John Hopkins Univ. Press, 2003) 67–79 (chap. 4, "Shame").

42 Boyarin, *Carnal Israel*, 148.

43 Notable in this context is another story in *b. Sukkah* 52a, which leads to the conclusion that it is particularly Rabbis and great scholars who are subject to intense sexual desire (and the nearly uncontrollable need to act on it): "Everyone who is greater than his fellow, (so too) his inclination (that is, his desire) is greater." For a brief discussion of links between this passage in *Sukkah* and our text in *Qidduṣin*, see Haim Schwarzbaum, "Female Fickleness in Jewish Folklore," in Eli Yassif, ed., *Jewish Folklore Between East and West* (Beer-Sheva: Ben Gurion Univ. of the Negev Press, 1989) 176.

44 Both Valler and Rosen-Zvi have articulated strong versions of this reading: see Valler, *Women in Jewish Society*, 40–51 in particular, and Rosen-Zvi, "The Evil Inclination, Sexuality, and the Yihud Prohibitions."

explicitly as “his Inclination” or the “Evil Inclination,” in the form of a pillar of fire – a heavily laden, charged, and sometimes phallic symbol in rabbinic literature.⁴⁵ This Rabbi experiences his desires as something alien to himself, an anarchic fire that cannot be contained, as by law, but which must be extinguished and expelled. Similarly in the stories of Rabbi Meir and Rabbi Akiva that follow, the impetus to sin is externalized from the man who experiences it (it is Satan who is the instigating force in these tales), and is placed beyond his control or the control of the legal safeguards advocated by the *mishnah* and the *sugya*’s legal discourse. Even the halt to the Rabbis’ progress towards the forbidden goal in these two episodes is not their own achievement, but an act of divine intervention.

Both of these suggested readings provide plausible answers to the questions posed in the analysis of the *sugya* to this point, but neither does so entirely smoothly. Each is challenged by the other; what is difficult to integrate into one reading supports another, and vice versa. If Rabbis are proper men, committed to and restrained by the law, effort must be extended to explain stories in which Rabbis impulsively attempt to act on illicit sexual desires. For one who understands that even (or particularly) committed Torah scholars are by nature overwhelmed by desire for the forbidden, the challenge will be to explain if not the function then certainly the efficacy of laws meant to regulate social interaction between the genders and thereby to prevent illicit sexual activity that might result. Each reading, of course, also encodes different assumptions about male sexuality. Yet what these readings share is their very focus on male sexuality, the male (Rabbi’s) experience of sexual desire. The last and most striking moment of the *sugya* lies ahead, however, when the female object of male desire comes forward as a character in her own right.

UNMASKING DESIRE

After the stories of R. Meir and R. Akiva, the *sugya* appears to take a turn away from its initial topic of discussion:

Pelimo had a habit of saying each day, “An arrow in the eyes of Satan.” One day – it was the eve of the Day of Atonement – he (*Satan*) appeared to him as a poor man. He came and called at the door. They brought out bread to him. He (*Satan*) said to him, “On a day like this, everyone is inside and I am outside?” They brought him in and offered him bread. He (*Satan*) said, “On a day like this everyone is at the table and I am alone?” They brought him in and sat him at the table. As he sat, he filled himself

45 Other uses of this image (in addition to biblical citations) in the *Bavli* appear in *b. Mo‘ed Qaṭ.* 25a, *b. Ketub.* 17a, 62b, and 77b, and *Naz.* 50b. The example in *b. Ketub.* 62b is particularly notable for the use of this imagery in a sexualized context; see Cohen, *Rereading Talmud*, 108.

with scabs and sores, and he was doing disgusting things. He/they said to him, [81b] "Sit nicely!" He (*Satan*) said to him, "Give me a cup." They gave him a cup; he coughed and spit his phlegm into it. They rebuked him. He (*Satan*) sank down and died (*feigned death*). They heard that people were saying, "Pelimo killed a man, Pelimo killed a man!" He (*Pelimo*) fled and hid in the outhouse. He (*Satan*) went after him. He (*Pelimo*) fell before him. When he (*Satan*) saw that he was grieving, he revealed himself. He (*Satan*) said to him, "Why did you say thus ('*An arrow . . .*')?" (*Pelimo responded*) "And rather, what should I say?" He said to him, "Let Master say 'May the Merciful One rebuke Satan.'"

The story of Pelimo and Satan would seem, at first glance, to be placed in this *sugya* by associative links, most particularly the language of "he appeared to him" and the motif of Satan humiliating a man through disguise, which are shared with the previous two stories. In other ways, however, it would appear to have only tangential relevance to the theme of this *sugya*, (men's, and more particularly Rabbis', experience of) sexual temptation.⁴⁶ Moreover, there are questions to be raised about the nature of Pelimo's offense, such that he should be humiliated so thoroughly by Satan. Similarly, the means by which Satan exacts his revenge are not sexual; indeed, Satan's point of entry is in what many other talmudic passages present as praiseworthy behavior, receiving and feeding the poor person begging at the door.

The motif of sexual temptation is very clear, however, in the final story, that of Rav Ḥiyya b. Ashi and "Ḥeruta":

Rav Ḥiyya b. Ashi had a habit: every time he fell on his face, he would say, "May the Merciful One save me from the Evil Inclination." One day his wife heard him. She said, "Since it has been several years that he has separated himself from me (sexually), what is the reason that he said this?" One day he was studying in his garden. She dressed herself up (and) passed repeatedly before him. He said to her, "Who are you?" She said, "I am Ḥeruta, and have just returned today." He propositioned her. She said, "Bring me that pomegranate that is on the top branch." He leapt up, and went and brought it to her. When he came to his house, his wife was lighting the oven. He went up and sat in it. She said, "What is this?"⁴⁷ He said,

46 It may be noted though that the phrase Pelimo recites, "an arrow in the eye of Satan," appears also earlier in the same tractate, *b.Qidd.* 29b–30a; in that location, it is presented more positively, and also as a suggestion that one has achieved mastery over one's sexual urges. The parallel might thus be read to reintroduce into our *sugya* both sexual temptation, and also unwarranted pride in presuming one has self-control over such urges. See also the surrounding passage there, which considers the potential conflict between marriage and Torah study, a topic that will be discussed in more detail below. On "an arrow in the eyes of Satan," see also *b.Sukkah* 38a.

47 Note that a very close parallel to this act and the woman's response appears in *b.Qidd.* 40a, one of the stories of "Rav Ḥanina b. Pappi and his fellows" (and see also *b.B.Meṣ.* 85a).

"What happened was thus and thus." She said to him, "It was I." He paid no attention to her, until she brought him signs.⁴⁸ He said to her, "I nonetheless intended something forbidden." All the days of his life that same righteous man fasted until he died of that very death.⁴⁹

In this final episode, the recurring plot device of a Rabbi and apparently pious man who is overcome by his sexual desires is allowed to play out to its conclusion. Like the protagonists of preceding stories, Rav Ḥiyya b. Ashi does not (initially) deliberately seek out a forbidden encounter in the garden or actively ignore the laws of *yihud*. When temptation presents itself, though, this Rabbi too succumbs to it. Torah learning, which he is engaged in at the very moment of "Heruta's" appearance, is no protection against his sexual urges. Moreover, where other Rabbis stopped or were stopped halfway into their sinful journey (a recurring motif up to this point), Rav Ḥiyya leaps to the top of the pomegranate tree; the storyteller only barely veils the implication that the Rabbi then proceeds with similar alacrity to sexual intercourse with the desirable "stranger" in his garden.

Nor is this consummation the only significant departure this story makes from its predecessors. Not least is that the woman involved is actually Rav Ḥiyya's wife. There is good reason for the reader to wonder whether it could be by chance that in the one story in which the sexual act is consummated, the sinful nature of that encounter is deeply conflicted. If the woman with whom Rav Ḥiyya has his sexual encounter turns out to have been permitted to him all along, has he indeed sinned? As well as asking if he is to be considered a proper man at the outset of the story, how should the reader evaluate his status during and after the sexual act, after his confession, and after the disguise has been revealed to him?

How one begins to approach these questions hinges in no small measure on how one chooses to fill a rather obvious gap in the opening of the story, in a plot detail integral to setting the rest of the story's events in motion. That is, contrary to what the reader might expect, Rav Ḥiyya has not been sexually intimate with his wife for several years — yet the narrator supplies no explicit information as to the reason for this abstinence. In light of the stories that precede this one, it is possible to interpret Rav Ḥiyya's sexual abstinence as being in some way connected to his (and the *sugya's* previously developed) fears of sexual temptation and sin.⁵⁰ Yet there also exist other viable explanations, and from different explanations flow potentially very different interpretations

48 This sentence does not appear in the Vatican or Munich manuscripts, nor in the Spanish recension.

49 This sentence does not appear in either the Vatican or Munich manuscripts.

50 See Valler, *Women in Jewish Society*, 49–50. Rosen-Zvi begins his analysis of the story in a very similar manner, but then acutely challenges this reading: Rosen-Zvi, "The Evil Inclination, Sexuality, and the Yihud Prohibitions," 79–80.

and evaluations of Rav Ḥiyya's abstinence, his wife's response, and his behavior during and following the encounter with "Ḥeruta."⁵¹ Further motivating the necessity of and the possibilities for filling this gap would be the reader's awareness that elsewhere in rabbinic sources a man's sexual activity with his wife is overwhelmingly presented as legitimate and laudable, even obligatory.⁵² More particularly, Rav Ḥiyya's withdrawal from marital relations would seem to contradict the continuation of the very unit of *mishnah* (and its toseftan parallel) to which the story is attached; as noted above, these materials imply that the very presence of a legitimate sexual outlet for a man is protection for him against inappropriate sexual temptation and/or behavior.⁵³

It does remain possible to interpret this story as consistent with, even the culmination of, the central concerns and issues regarding male sexuality highlighted by the hypotheses already presented for reading this *sugya*. On the one side, one might argue that had Rav Ḥiyya properly observed the law of the Mishnah and Talmud – had he, for example, recognized and availed himself of the proper sexual outlet provided by his wife – he would not have gone astray. Alternately, the story might be read as the ultimate finale of the *sugya*, the point at which Satan/the Inclination, in the form of "Ḥeruta," proves more powerful than any defense and overcomes even the most pious of men. I would claim, however, that although this story can be made to "fit" with the others in the *sugya* within the boundaries set by the hypotheses already suggested, its discordant elements already noted suggest that yet another hypothesis may be forwarded to explain both its presence here and its relationship to what has preceded it.

As discussed at the conclusion of the previous section, what both the legal and narrative elements of the *sugya* to this point have shared has been a focus on male sexuality. However we interpreted and answered the central questions of the *sugya*, the discourse remained almost exclusively focused on male experiences of sexual desire. In the stories that preceded this final episode, women are hardly characters at all; what they are or are not doing in the stories is mostly irrelevant to the actions and reactions of the male protagonists. The woman on the

51 For some other theories/suggestions, see the commentary of Rashi, and Eliezer Diamond's brief discussion of possible roots for Rashi's comment: Eliezer Diamond, *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture* (Oxford, New York: Oxford Univ. Press, 2004), 38. See also Yonah Fraenkel, "Prominent Trends in the Transmission History of the Text of Aggadic Narratives," *Proceedings of the Seventh World Congress of Jewish Studies: Studies in the Talmud, Halacha and Midrash* (1981): 59–61 (Heb.), and Shlomo Naeh, "Freedom and Celibacy: A Talmudic Variation on Tales of Temptation and Fall in Genesis and Its Syrian Background," in Judith Frishman and Lucas Van Rompay, ed., *The Book of Genesis in Jewish and Oriental Christian Interpretation* (Louvain, Belgium: Editions Peeters, 1997) 73–89.

52 See *m.Ketub.* 5:6 and *b.Ketub.* 61a–62a.

53 A strong articulation of this point can be found in Rosen-Zvi, "The Evil Inclination, Sexuality, and the Yihud Prohibitions," 80.

road ahead of Rav and Rav Yehuda is not said to be doing anything but walking, and she does not ever interact with them. The former captive in the upper story of Rav Amram's house merely passes by the opening to the lower floor, and the narrative does not address how she might have reacted had Rav Amram completed his ascent of the ladder. In the stories about Satan and R. Meir and R. Akiva, there is no "real" woman at all. On the other hand, Rav Ḥiyya's wife is an active participant in this last tale. She speaks her mind from the first time she appears, even before she takes on her disguise. Once disguised she not only continues to speak, but is named as are only very few other women found in the Talmud. Indeed, she names herself, is self-defining.⁵⁴

In fact, Ḥeruta's story lends itself to some rather intriguing parallels with a story in *b.Nid. 20b*, as read and interpreted by Rachel Adler.⁵⁵ In that passage, the character Yalta contests Rabbah bar bar Ḥana's ruling that a blood sample she has brought to him is impure (that is, menstruous); she consults Rav Yitshak for another opinion. Although by rabbinic principle one Rabbi should not contradict the ruling of another, Yalta convinces Rav Yitshak to overturn his colleague's judgment with a claim that Rabbah bar bar Ḥana was on this particular occasion unable to rule properly due to a pain in his eye. As Adler notes of this story, "There are two ways of reading the narrative, one of which is considerably less destabilizing than the other."⁵⁶ The first possibility is that Rabbah bar bar Ḥana was indeed unable to provide an accurate ruling due to circumstances; Yalta has a legitimate grievance, one that is unique to this situation and that can be contained within the rules and procedures of the rabbinic system. A "darker, more ironic" alternative, however, is to read Yalta's actions as

54 What is more, the name she gives herself, "Ḥeruta," evokes immediate associations with *herut*, freedom. As Rubenstein notes, "Names of characters regularly feature in a type of wordplay such that the symbolic meaning of the name substantively relates to the narrative content." Rubenstein, *Talmudic Stories*, 246; see also 247. For additional suggestions as to the significance of the name, see Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (repr., 1886. New York: The Judaica Press, Inc., 1996) 500, 460, 426; Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods* (Ramat Gan: Bar Ilan Univ. Press; Baltimore and London: The Johns Hopkins Univ. Press, 2002) 432; Fraenkel "Prominent Trends," 60, n. 73; and also the extended discussion in Naeh, "Freedom and Celibacy."

Rashi does not address the meaning of the name itself, but states that it was "the name of a well-known prostitute in the town." Despite the fact that there is nothing in the story itself which explicitly suggests this reading (perhaps Rashi imported it from the story of Judah and Tamar — see below), this understanding of Rav Ḥiyya's wife's disguise has been adopted, at least in passing, almost unanimously by modern scholars who have written about the story; the notable exception is Tal Ilan, *Silencing the Queen: The Literary Histories of Shelamzion and Other Jewish Women* (Tubingen, Germany: Mohr Siebeck, 2006) 88–90.

55 Rachel Adler, "Feminist Folktales of Justice: Robert Cover as a Resource for the Renewal of Halakhah," *Conservative Judaism* 45, no. 3 (1993) 40–55.

56 Adler, "Feminist Folktales," 53.

"calculated attempts to manipulate the system." Yalta may thus be understood as "the trickster in the tale, the folkloric prankster who incarnates and unmasks what is arbitrary, chaotic, or unjust in our universe."⁵⁷ "Ḥeruta's" actions, I would argue, are also open to a reading of this latter sort.

In taking on a disguise and assuming her role as Ḥeruta, Rav Ḥiyya's wife readily offers herself for interpretation as a trickster figure. Indeed, she follows on the heels of the other, well-known trickster already introduced in the *sugya*: Satan. Particularly striking is that the question she asks, the question that initiates her transformation into Ḥeruta—"Why did he say this?"—directly echoes that of Satan to Pelimo, "Why did you say this?" Valler astutely observes that Rav Ḥiyya's prayer at the opening of this last story can be read as an answer to Pelimo's failed petition of the previous story; that is, he does not curse the Impulse (and/or Satan) directly, but rather calls on the Merciful One to aid him.⁵⁸ Yet Rav Ḥiyya's prayer is put to question just as is Pelimo's, in nearly identical language. If Satan's question to Pelimo is worthy of answer, what of that of Rav Ḥiyya's wife?

Moreover, the response of Rav Ḥiyya's wife to her situation has significant intertextual echoes with the story of Judah and Tamar in Genesis 38, a story whose plot also hinges on disguise and an act of female sexual agency.⁵⁹ As has already been noted, there is an argument to be made that Rav Ḥiyya has a conjugal duty to his wife; as in the biblical story, then, a man is withholding from a woman a marital/sexual relationship to which she is entitled. Like Tamar, Rav Ḥiyya's wife disguises herself, and in her disguise makes use of her sexual desirability. So too, she claims a token from the man who seeks her sexual company as proof of his intentions, and (in some readings of the story) later presents tokens to the man that make clear the identities of the partners to a sexual act.

We could reasonably claim, then, that Ḥeruta's disguise (and similarly the question that provokes it) is an opportunity for the androcentric perspective of the entire discussion up to this point to be unmasked. Where men have tried to demonstrate their need to be separated from social interactions with women,

57 Adler, "Feminist Folktales," 53. Adler's reading is explicitly indebted to Robert Cover, "The Folktales of Justice: Tales of Jurisdiction," in Martha Minow, Michael Ryan, and Austin Sarat, eds., *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor: The Univ. of Michigan Press, 1992) 173–201. For another interpretation of this story, see Charlotte Elisheva Fonrobert, "Yalta's Ruse: Resistance Against Rabbinic Menstrual Authority in Talmudic Literature," in Rahel R. Wasserfall, ed., *Women and Water: Menstruation in Jewish Life and Law* (Hanover and London: Univ. Press of New England, 1999) 60–81.

58 Indeed, Valler presents this as the key point linking the two stories: Valler, *Women in Jewish Society*, 49. It is also worth noting the parallels established between the two narratives by the common language of "he had the habit . . . every day/time," used to characterize each Rabbi's prayer activity.

59 The plucking of the pomegranate from the top of the tree also has hints of Adam and Eve eating the fruit of the Tree of Knowledge in Genesis 3. See Naeh, "Freedom and Celibacy."

or deemed such social interactions dangerous to male self-control, Ḥeruta demands that a man see her, interact with her, attend to her sexual needs. I have already argued above that at the center of the *sugya* prior to this point has been the question whether there might be socially and legally significant differences between “proper” and “unrestrained men,” or whether the former category is to be defined so narrowly as to be nearly non-existent. Does law provide a means to protect a man from acting on illicit sexual urges, or is the Inclination towards sexual sin so strong as to overpower any limits placed upon it? Through her disguise, however, Ḥeruta may be understood to challenge altogether the validity – or at least the completeness – of this central concern of the *sugya* up till now. That is, Ḥeruta’s story creates an opening for the reader to shift his/her perspective in a way that throws everything that preceded this story into an ironic light; she acts out resistance to the idea that men could ever adequately consider or legislate controls on their own sexuality without consideration of and for the sexuality – the sexual needs and desires – of the women who are their sexual partners.

And yet, in one more turn of the screw, it may very well be this disruptive potential that Ḥeruta has at this moment to overturn the androcentric perspective of the previous stories and discussion that provokes the ending this story has been given (especially in the Venice and Vilna printings of the Talmud). Rav Ḥiyya and the redactor of the passage remain ambivalent about the events of the story. Like the biblical patriarch Judah, Rav Ḥiyya acknowledges wrongdoing when the full details of the sexual encounter come to light. Yet what he acknowledges is his wrong in having sex with a woman he had legitimate reason to think was forbidden to him; he does not accept responsibility for sexually depriving his wife or even indicate any recognition of this as a fault. In the *Bavli* as we generally encounter it, moreover, Rav Ḥiyya so punishes himself out of guilt for what he has done (and is deemed “righteous” as he does so) that his wife will come to suffer the ultimate deprivation of his presence, that is, widowhood.⁶⁰ In addition, the redactor follows the story and concludes the *sugya* with several traditions meant to illustrate the idea that one ought to be held liable even for a permitted act if one performed it under the misapprehension that it was forbidden and with the willful intent to perform the supposedly forbidden act. The final act of the *sugya* would seem to be an attempt to redraw the curtain that was briefly lifted, to restore the linkage between male sexual urges and the sinful actions they can – or perhaps inevitably – lead to. But this move as easily adds one more layer of ambiguity as resolves it.⁶¹ The perceptive reader will not be quick to forget, or dismiss the intriguing import of, what s/he has been allowed to briefly see.

60 But see n. 49 above.

61 For an example of a similar phenomenon in another location, see both Boyarin and Cohen’s

CONCLUSION

A number of features discussed above suggest that ambiguity and ambiguous cruxes are deliberately built into the *sugya* of *b.Qidd.* 80b–81b. This is particularly true of the *sugya*'s culminating moment in the story of Rav Ḥiyya and "Heruta," a story with numerous stylistic and linguistic elements embedded in it that make clear that it was carefully crafted to its location, but such features are evident elsewhere in the *sugya* as well. The multiple plausible interpretations that result from trying to interpret the series of textual gaps in the *sugya* complicate discussion or interpretation of the cultural function of and work being done by this *sugya*. Certainly, we can at least say that the *sugya* represents an exploration of unresolved (perhaps irresolvable) socio-cultural tensions that its rabbinic authors felt around gender relations and/or the male experience of sexual desire. As has been noted by other scholars, the Rabbis constructed a society for themselves in which the most highly valued activity, Torah study, took place in the all-male environment of the study house, and yet the male participants in that activity were also expected, as a matter of religious obligation, to marry and maintain (sexual) relationships with women. Narrative, then, becomes a site where these opposing forces can be "personified" and the personifications set in motion; in the resulting drama, the full scope of possible conflicts can be explored, and/or imagined resolutions tested. The laws of *yihud* attempt to regulate and control social and sexual behavior and thus the influence of sexual desire in everyday life. In such a context, these stories that the Talmud juxtaposes to its legal discussion personify both Rabbis' hopes that such controls can be effective, alongside also their fears that sexuality cannot be so contained. Likewise, these stories test their doubts about whether their own engagement in Torah study is indeed protection against feeling illicit desire, or at a minimum against acting upon it; does being a Rabbi and scholar in fact insure that one will also be a "proper" man? Through these stories Rabbis consider the possibility that despite temptation they will be able to stop themselves halfway up the ladder, as it were; at the very same time, they may feel themselves to be powerless to resist in the moment, but nonetheless retain some hope of outside intervention in recognition of their positions as scholars of Torah. Finally, through the person of one who is both intimate and an outsider (that is, a rabbinic wife), the Rabbis allow for the possibility that they have not even correctly framed the essential question(s).

Boyarin proposes that in reading rabbinic writings, "The text has to be read

reading of the end of the *sugya* of *b.Ketub.* 62b–63a: Boyarin, *Carnal Israel*, 155–56, and Cohen, *Rereading Talmud*, 120.

in two modes. At one level, it has to be read for the ideology of the redactor[s], but at the same time, the contrary ideologies of the sources cited and problematized by those redactors have to be taken into account.”⁶² When we come to the end of our reading of *b.Qidd.* 80b–81b, however, can we associate the different possible understandings of sexuality embodied in the text with a dominant and a contrary ideology? Or, put another way, can we readily answer Cohen’s proposed goal that “. . . in analyzing any specific *sugya*, I attempt to understand the larger and smaller narratives in which the *sugya* is embedded. This entails answering the question: ‘What kind of story would need to be told by those who would feel implicated in the *sugya*, in order for the assumptions, norms and demands of the *sugya* to make sense?’”⁶³ In truth, the *sugya* may be as easily, and as problematically, read as a construction of an essentialist picture of male sexuality – whether as in need of legal control, or as fundamentally uncontrollable – on the one hand, or a clever (albeit somewhat equivocal) undermining of the idea that male sexuality can be discussed properly in isolation from consideration of female sexuality on another. If we now further recognize that other talmudic passages are likely to be similarly ambiguous, and if we nonetheless wish to continue to read and study *sugyot* with an eye towards their functions as cultural productions (that is, as both products and producers of culture), how are we to do so?

I would conclude, then, by suggesting that Alexander’s work on identifying the use(s) of ambiguity in talmudic literary creation may also provide a different way into the question of the “cultural work” of rabbinic literature. That is, I would like to propose that an acknowledgement of ambiguity in our reading practices may lead us to a shift in focus, not a rejection but certainly a reworking of the question “What cultural work does this text do?” The primary question to be posed, then, would be what possible cultural work does ambiguity *itself* achieve, or could it be intended to achieve? Alexander describes several purposes that moments of ambiguity in a literary work can serve, among them creating dramatic tension, engaging readers’ attention and prompting them to a deeper reading of the text, and enhancing the aesthetic appeal of the

62 Boyarin, *Carnal Israel*, 111. See also Alexander’s characterization of Boyarin’s approach: “He takes rabbinic literature to be the record of cultural contestations, and so identifies both the dominant voices that ‘won’ the battle for cultural hegemony and those countervoices that ‘lost.’” Alexander, “The Impact of Feminism on Rabbinic Studies,” 108. As an example, Boyarin writes of a particular text he is analyzing (*b.Ned.* 20a–b), “. . . we see that *there were two opposed notions* of the discourse of sexuality within the cultural formation of, at least, the Babylonian Talmud, *with the weight of hegemony going, however, to the one that renounced vision and thus control over the sexual practices of the couple but insisted on mutual desire and intimacy in the conduct of relations.*” *Carnal Israel*, 125, emphasis added.

63 Cohen, *Rereading Talmud*, 147.

composition. Thus, she writes, “experiencing the moment of disorientation and wrestling with the resultant ambiguity constitutes one of the great aesthetic pleasures of reading sections of dense argumentation in the *Bavli*.”⁶⁴ For this reader who has now been prompted to read more closely and deeply, the resultant effects of the interpretive struggle are hardly limited to aesthetic pleasure. Addressing this reader who finds him/herself in the presence of a text open to dual or multiple possible systems of gap-filling, Sternberg writes,

... [the reader] will accept the narrator’s invitation in the spirit in which it is extended: as a challenge to participate in the *making* of sense. . . . With ambiguous cruxes, the reader must no more expect (and impose) a quick than a facile resolution, not even one in the form of the permanent ambiguity of stalemate.⁶⁵

That is, the reader is asked to do more than simply recognize the ambiguity, but to engage with it, to delve into its varying interpretations, to weigh the merits and shortcomings of each and consider their implications. Alexander thus suggests that it is this very process of grappling with difficult and fraught areas of life (as gender and sexuality are) that the talmudic authors/redactors hoped to inspire in their readers with their ambiguous literary constructions, that the process itself is the cultural work of both the *sugya* and those who will read it: “its readers must wrestle again and again in each generation with the same questions.”⁶⁶ Recognizing and embracing gaps, multiple possibilities of interpretation, irony, reversals, etc. as we read also allows us an opportunity to consider more openly and directly the cultural work that *we* (readers and scholars) may be doing, or could be doing, as we delve into talmudic literature. Rather than provide us with answers, the text invites us seek out its unresolved tensions, and thereby become participants in an ongoing debate about the issues that are of central concern not only to the Rabbis, but also to us in our own lives – for in the final analysis, why else do we bring to the text the questions that we do?

I want to thank members of the Feminist Sexual Ethics Project at Brandeis University, notably Dr. Bernadette Brooten (Project Director), Dr. Kecia Ali (Senior Research Analyst), and Molly Lanzarotta, who read my initial translations and writings on this material. Gratitude is also due to Drs. Kristin Lindbeck, Ishay Rosen-Zvi, Miriam Glazer, and Aryeh Cohen, each of whom provided constructive criticism to my earlier explorations on this topic.

64 Alexander, “Art, Argument and Ambiguity,” 102.

65 Sternberg, *The Poetics of Biblical Narrative*, 202–3; emphasis in the original.

66 Alexander, “Art, Argument and Ambiguity,” 131.

Blessings over *Miṣvot*

The Origins of a Category

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The category of blessings over *miṣvot* (ברכת המצות) occurs for the first time as a category in *t.Ber.* 6. This essay traces the origins of this category. I identify a variety of blessing practices in Second Temple Judaism and early rabbinic Judaism that likely played roles in the emergence of the *ברכת המצות*: blessings highlighting Israel's election; blessings over undertakings (particularly virtuous ones); and blessings associated with tithes. The crucial step from these practices to the category of the *ברכת המצות* was the transformation of the notion of *מצוה* itself in rabbinic Judaism, so that it came to refer, paradigmatically, to discrete, positive ritual acts. An appendix pursues a topic connected to the discussion of tithes in the body of the essay: the acquisition by the word *מצוה* of the meaning, "alms."

A general rule in *t.Ber.* 6:9 mandates: "העושה כל המצות מברך עליהן" "One who performs any commandment recites a blessing upon it."¹ The Tosefta follows with a long list of concrete examples (*t.Ber.* 6:9–14). Two kinds of blessings occur in the list. The first, *ברוך שהחיינו* "Blessed [. . .] who gave us life," is recited upon the creation of ritual objects employed in the fulfillment of commandments, while the second, which after the introductory eulogy continues with *אשר קדשנו במצותיו וצונו* "who sanctified us through his commandments and commanded us," is pronounced in connection with the performance of the commandment itself. The latter blessing is described in the Babylonian Talmud and later sources as the *ברכת המצות*.²

The *ברכת המצות* serves a ritual function by defining the act that it accompanies. It clarifies, for example, that one is not merely sitting in the cool shade of a hut, but fulfilling the obligation to dwell in a *sukkah*. Comparable is the *Didache*'s mandate (7:1) that baptism occur "in the name of the Father and of the Son and of the Holy Spirit." Van de Sandt and Flusser reasonably suppose that something like the quoted text was recited verbatim at baptisms in order to specify the actors' intent.³

1 Quotations from the Tosefta follow MS Vienna, unless otherwise indicated.

2 The term occurs in *b.Ber.* 46a in a statement marked as tannaitic (תניא) and loosely related to *t.Ber.* 1:5, 9. The statement is paralleled, this time with provenance unmarked, in *b.Pesah.* 104b. For discussion of the formulation of the *ברכת המצות* in rabbinic literature, see Shimon Sharvit, "The Blessings Before *Mitzvot*: Their Versions and the Distribution of their Formulas," *Bar-Ilan* 26–27 (1995) 377–88 (Heb.). On the *שהחיינו* blessing see below.

3 Huub van de Sandt and David Flusser, *The Didache: Its Jewish Sources and its Place in Early Judaism*

Despite the blessing's functional importance, no literature earlier than this passage in the *Tosefta* mandates, as a general rule, the recitation of blessings in connection with the performance of commandments.⁴ The fact that Rabbi in the early amoraic period debate the proper moment for recitation of the blessing may (though need not in itself) imply that the category, as such, was of fairly recent vintage.⁵ The category is absent from a passage in the Community Rule at Qumran (1QS x, 13–16) that seems to summarize the chief occasions for blessing God:

בר) שית משלח ידי ורגלי אברכ שמו בראשית צאת וברא 14 לשבת וקום ועם משכב יצועי ארננה לו ואברכנו תרום מוצא שפתי במערכת אנשים 15 ובטרם ארים ידי להדשן בעדני תנובת תבל ברשית פחד ואימה ובמכון צרה עם בוקה 16 אברכנו

When I first send forth my hands and legs I will bless his name. When I first go out and return 14 and sit and rise, and on laying on my bed I will sing to him, and I will bless him by the offering of what leaves my lips in the array of men, and 15 before I raise my hand to enjoy the delights of the produce of the earth. At the beginning of fear and terror and in the foundation of trouble and devastation 16 I will bless him.⁶

The passage identifies at least three distinct occasions for the utterance of blessings: the stages of the day, consumption of food, and distress.⁷ Performance

and Christianity, CRINT III.2 (Minneapolis: Fortress Press, 2002) 283–86.

- 4 References to blessings over commandments as a category also occur in passing in *t.Ber.* 1:6–7 and *t.Meg.* 3:27. See also *t.Ber.* 6:1, where, however, on Saul Lieberman's view (*Tosefta Ki-Fshutah* [New York: Jewish Theological Seminary of America, 1955] 1:102 [Heb.]), the reference is not to blessings in connection with the performance of commandments but to thanking God within the grace after meals for having granted Israel the commandments.
- 5 See *y.Ber.* 2:3 (4c); 9:3 (14a); *b.Pesah.* 7b; *b.Sukkah* 39a; *b.Meg.* 29b; *b.Menah.* 35b; *b.Nid.* 51b. Traditions attributed to the *amora* Samuel on this topic are examined in Baruch Micah Bokser, "Blessings and *Mišvot*: The History of the *Halakhah*, and the Beginnings of the *Gemara*," in Ruth Link-Salinger, ed., *Jewish Law in Our Time* (New York: Bloch, 1982) 3–17.
- 6 The Hebrew text is taken from Elisha Qimron and James H. Charlesworth, "Rule of the Community (1QS)," in James H. Charlesworth, ed., *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Volume 1: Rule of the Community and Related Documents*, PTS DSP 1 (Tübingen: J. C. B. Mohr, 1994) 44. The translation is mine.
- 7 On blessings associated with the stages of the day and the year, see also the preceding lines (1QS ix, 26–x, 8); on blessings before consumption of food (bread and wine) see also, for example, 1QS vi, 5–6; 1QSa ii, 17–22, and see below; and on blessings in distress see also the preceding section (1QS ix, 26) and the immediate continuation (1QS x, 17). Jacob Licht (*The Rule Scroll: A Scroll from the Wilderness of Judaea*, 1QS, 1QSa, 1QSB: Text, Introduction and Commentary [Jerusalem: Bialik, 1965] 217 [Heb.]) suggests that consumption of food and distress occur as something of a merism for all occasions, good and bad.

of commandments does not occur here as such an occasion.⁸

But there were blessings over commandments before there was a *ברכת המצות*: prior to the articulation of the category in the Tosefta, blessings were recited that might plausibly be characterized, in retrospect, as instantiations of that category. The first two parts of this article examine two kinds of blessing practices that are more or less continuous with the *ברכת המצות*. The first, involving blessings celebrating Israel's nomistic election, is foregrounded by the content of the *ברכת המצות* itself, which highlights sanctification through the commandments. The second involves blessings recited before undertakings in general. In the third part I argue that the road from these blessing practices to the Tosefta's dictum was paved chiefly by the transformation of the category of *מצוה* in tannaitic literature. The fourth and final part of the article suggests that, beyond this broad development, the emergence of the *ברכת המצות* owes a debt specifically to blessing practices associated with the institution of tithing. An appendix pursues another aspect of the relationship between tithing and the category of *מצוה*.⁹

COMMANDMENTS AND ELECTION

The standard text of the *ברכת המצות* highlights the theme of election: God sanctified Israel by issuing them commandments.¹⁰ The association between the commandments and Israel's election is a theme of other tannaitic texts, perhaps most strikingly *Sifre Num.* 99, which interprets Amos 9:7 *הלא כבני ישראל* *כשיים אתם לי בני ישראל*, *Are you not like the children of Kush to me, children of Israel?* Amos strikes in this verse against Israelite exceptionalism, but the *midrash* turns his statement on its head.¹¹

- 8 Another category absent from the above paragraph is the blessing upon witnessing noteworthy phenomena, described in *m.Ber.* 9; *t.Ber.* 6. On this category – the *ברכת הראייה* – see Ishay Rosen-Zvi, “Responsive Blessings and the Development of the Tannaitic Liturgical System,” *JSIJ* 7 (2008) 1–29 (Heb.).
- 9 While this essay examines the *historical* origins of the *ברכת המצות*, note should be taken of the *exegetical* basis furnished for it in the Yerushalmi (*y.Ber.* 6:1 [10a], by R. Tanḥuma in the name ultimately of R. Eleazar): *הקיש תורה למצוה מה תורה* (והתורה האבן [והתורה והמצוה] *קיש תורה למצוה מה תורה* ואתנה לך את לוחות האבן [והתורה והמצוה] *קיש תורה למצוה מה תורה* ואתנה לך את לוחות האבן) *“And I gave you the stone tablets, [and the Torah and the commandment]”* (Exod 24:12). It compares Torah to commandments. As Torah requires a blessing, so commandments require a blessing” (MS Leiden).
- 10 Cf. the view of Eleazar b. Judah of Worms in his *Rokeaḥ*, quoted by Saul Lieberman (*Tosefta Ki-Fshutah*, 1:112), that one should not recite a *ברכת המצות* over the giving of charity and other commandments that gentiles too are obligated to perform.
- 11 Amos 9:8b–12, part or all of which is often understood as secondary, itself softens Amos' attack by emphasizing that Israel will survive as God's chosen, and only sinners will encounter destruction. This epilogue may have influenced the rabbinic interpretation of Amos 9:7. The rabbinic in-

וכי כושיים הם אלא מה כושי זה משונה בעורו אף ישר' מצויינין במצות תורה יותר מכל אומות העול'

And are they in fact Kushites? Rather, as the Kushite is distinguished through his skin [color], so Israel is marked out through the מצות of the Torah beyond all the nations of the world.¹²

The sanctity of the commandments emerges throughout tannaitic literature in observations on “the holiness of (קדושת) all the מצות.”¹³ Likewise Isi b. Aqavia, commenting on Exod 22:30, claims that when God innovates a commandment (מצוה) upon Israel, he adds sanctity (קדושה) to them.¹⁴

The preoccupation of the ברכת המצות with the themes of sanctity and election constitutes a channel of continuity between the tannaitic ברכת המצות and blessings from the Second Temple period that emphasize Israel's nomistic election. The closest approach to a rabbinic ברכת המצות in the Dead Sea Scrolls occurs in the liturgies for purification from corpse impurity and other lesser defilements (4Q284; 4Q414; 4Q512). These texts, which resemble each other closely, include an introductory eulogy (ברוך אתה אל ישראל) (4Q284 2 ii, 5 and throughout) and expressions that address God's issuance of a law, Israel's (or the sect's)

interpretation may also take advantage of the rhetorical particle הלא, which winkingly reads as its opposite, לא. In the latter respect, there is a loose relationship to the phenomenon of “converse translation,” on which see Michael L. Klein, “Converse Translation: A Targumic Technique,” *Bib* 57 (1976) 515–37.

¹² The quotation — and all others from *Sifre Numbers* and *Sifre Deuteronomy* in this essay — follows MS Vatican 32 (Horowitz ed., 99). See also *Sifra Milu'im* 1:2 (Weiss ed., 44c), where בנות ציון “daughters of Zion” (Cant 3:11) is transformed by a pun (מצוין > ציון) into בני המצוינים לי “sons marked out to me through circumcision and shaving.” (Quotations from the *Sifra* in this essay follow MS Vatican 66 [Assemani].) The named commandments, which figure importantly as physical signs of Jewish identity — on shaving see *t.Šabb.* 6:1 — imply that Israel's markedness in this case, too, involves distinction from other nations. The gender aspect in the *Sifra's* exegesis is worthy of incidental note: the בנות become בני, and distinguished specifically by intrinsically masculine manifestations of affiliation.

¹³ *Sifra Aḥarei Mot* 8:3 (Weiss ed., 91d); *Sifre Num.* 115 (Horowitz ed., 127).

¹⁴ *Mek. R. Ish. Kaspa* 20 (Horowitz ed., 320). Isi evidently wishes to explain the connection between the two halves of the verse: *And you shall be people of holiness to me, and you shall not eat of a torn animal in the field.* The interpretation of one half of Exod 22:30 in light of the other also underlies a ruling on the status of certain fats that is attributed in *Mek. R. Ish. Kaspa* 20 (Horowitz ed., 320) to Isi b. Gur-Aryeh and in many other places (*b.Pesah.* 24b; *b.Hul.* 115b) to Isi b. Yehudah. For the view that the various “Isi”s represent the same person, see *b.Yoma* 5a and *b.Pesah.* 10a, affirmed by David Hoffmann, *Zur Einleitung in die halachischen Midraschim* (Berlin: M. Driesner, 1888) 38–39. I have argued elsewhere (“Duties and Ends: On the Structure of Normativity in Tannaitic Judaism” [Ph.D. diss.; New Haven: Yale Univ., 2008] 228–30; and see now my book, *What is Good, and What God Demands: Normative Structures in Tannaitic Judaism* [Leiden: Brill, 2010] 105–7) that the terms קדושה מצוה and איסור מצוה also preserve a relationship between the categories of commandment and holiness.

election, and sanctity. Thus, for example: חרתה טהרת אמת לעמכה “you have engraved true purity for your people” (4Q284 3, 4); חוקי לבני בריתכה (4Q284 4, 2); חוקי לכה כי ממוצא פיכה (4Q414 2 ii+3, 7); קודשכה (4Q414 2 ii+3, 1 and 4Q512 64, 6); חוק כפור לעם טה[ור] (4Q414 7, 3); עם קודש (4Q414 7, 9; 4Q512 29–32, 2); להתקדש לכה (4Q512 1–3, 10).¹⁵ Israel’s sanctity is manifested through the ritual act and celebrated in the blessing liturgy that accompanies it.

Israel’s nomistic election is also a theme of certain self-standing liturgies that occur independent of any additional ritual act. Thus, for example, a version of the blessing over the Sabbath (the fourth blessing) in the Sabbath *‘amidah* that may date to the tannaitic period echoes Nehemiah 9:13–14 in associating acknowledgment of the Sabbath with praise of God for having elected Israel through the commandments.¹⁶ This blessing would not be understood, in rabbinic terms, as a ברכת המצות, despite its thematic continuity with the blessing in the above purification ritual, but it provides another attestation of the practice of praising God for Israel’s election through law.

BLESSINGS UPON UNDERTAKINGS

The paragraph from the Community Rule quoted above speaks of blessing God before embarking and entering. As Joseph Heinemann observes, this passage resembles *t. Šabb.* 7:22, which comes toward the end of a list of acts that confront the problem of דרכי האמורי “the ways of the Amorites,” that is, acting like the surrounding gentiles: אילו דברים המותרין היה מתחיל במלאכה נותן הודאה ושבח לפני המקום “These things are permissible: if he is beginning work, he gives thanks and praise before God.”¹⁷ While the text specifies thanks and praise, the liturgy to which it refers presumably includes a prayer for success in the subsequent undertaking. Tobit, in advising his son (Tob 4:19), appears to allude to a like practice: “Bless the Lord God on every occasion; ask him that your ways may be made straight and that all your paths and plans may prosper.”¹⁸

15 The phrase עם קודש is a conjectural reconstruction, first advanced by Maurice Baillet (*Qumrân Grotte 4.111* [4Q482–50], DJD 7 [Oxford: Clarendon Press, 1982] 271). It is rejected by Joseph M. Baumgarten, “The Purification Rituals in DJD 7,” in Devorah Dimant and Uriel Rappaport, eds., *The Dead Sea Scrolls: Forty Years of Research*, STDJ 10 (Leiden: Brill, 1992) 204, but accepted, on persuasive grounds, by Esther Eshel, “Ritual of Purification,” in Joseph Baumgarten, et al., eds., *Qumran Cave 4.xxv: Halakhic Texts*, DJD 35 (Oxford: Clarendon Press, 1999) 143; Ian C. Werrett, *Ritual Purity and the Dead Sea Scrolls*, STDJ 72 (Leiden: Brill, 2007) 237–38.

16 See Menahem Kister, “The Prayers of the Seventh Book of the *Apostolic Constitutions* and their Implications for the Formulation of the Synagogue Prayers,” *Tarbiz* 77 (2008) 227–30 (Heb.).

17 See Joseph Heinemann, *Prayer in the Talmud: Forms and Patterns* (Berlin: Walter de Gruyter, 1977) 37 and n. 1. Heinemann offers other examples of prayers recited upon undertakings on 38 and n. 2.

18 The translation is from the RSV. The text occurs only in the shorter Greek recension (G1) pre-

There is no doubt an implicit understanding, in these cases, that the undertaking for which one attempts to enlist God's aid is at least neutral, if not praiseworthy. This praiseworthiness condition is made explicit in Tobias' prayer to God on the night of his marriage (Tob 8:5–8).¹⁹ Tobias begins by blessing and praising God (Tob 8:5). Then he references the primordial "marriage" of Adam and Eve (Tob 8:6: "You made Adam, and you made Eve, his wife, as a help and support for him . . . and you said, 'It is not good for the man to be alone, let us make for him a helper like him' [Gen 2:18]"), and states that he is marrying out of piety (Tob 8:7: "And now, not out of lust do I take this my sister, but with righteousness"). Hence, he concludes, God should preserve him, presumably from the fate that befell his wife's previous husbands on their wedding night (Tob 8:7: "Be merciful to me and her, and let us grow old together"). Tobias feels justified in seeking God's aid because the act that he undertakes was ordained by God, and because he performs it in good faith.

Philo too, in a curious comment on Gen 24:52 (QG 4.130), associates blessing God with pious undertakings in particular. The verse tells of Abraham's servant prostrating himself before God. The servant's motive seems clear: having received Laban's and Bethuel's approval of Rebecca's decision to marry Isaac (vv. 50–51), he now bows to God as a gesture of thanks and praise, just as earlier in the narrative, after Rebecca informed the servant of her identity and invited him to her home (vv. 24–25), he bowed before God (v. 26) and thanked him for guiding him to his master Abraham's family (v. 27). But Philo's question instead assumes a connection between the servant's second prostration in v. 52 and the verse that follows: "Why does the servant, after prostrating himself before the Lord, give vessels of silver and gold, and garments to Rebecca and her mother?"²⁰ While counter-intuitive, Philo's assumption that the servant's prostration in v. 52 is related to the events of v. 53 may, in fact, be grounded in a comparison of the second prostration with the first. The first prostration (v. 26) sets the stage for what follows, an utterance of thanksgiving to God (v. 26). Philo therefore assumes that the meaning of the second prostration (v. 52), too, is bound up with the verse that follows, this time not a thanksgiving prayer but a bestowal of gifts. In any case, Philo's answer is of particular interest: "It is proper to make

served in Vaticanus and Alexandrinus, which is generally deemed more derivative than the longer recension in Sinaiticus (GII).

19 The prayer occurs in both recensions. I quote from GII with my own translation. For brief discussion of Tob 8:5–8 and 1QS x in connection with other "prayers for success" from the Second Temple period (Neh 1:11; Jdt 3:4–5, 7; Add Esth C 12–30) see Jacob L. Wright, *Rebuilding Identity: The Nehemiah-Memoir and its Earliest Readers*, BZAW 348 (Berlin: Walter de Gruyter, 2004) 13 and n.18, 16 n.27.

20 For all quotations from Philo in this essay I use the Loeb translation, with spelling standardized. The surviving Greek fragment of this passage is printed in *Questions and Answers on Exodus*, LCL 401 (Cambridge, Mass.: Harvard Univ. Press, 1953) 223.

thanksgiving and honor to God the beginning of every pure deed.”²¹ That is, at the beginning of every pure deed should come thanksgiving to God. “For this reason the servant first prostrates himself before the Lord, and then offers the gifts.” The absence of any genuine exegetical “irritant” – any real *problema* – suggests that Philo here reads Scripture in light of a common practice.

The popular practice of blessing God upon any undertaking, or upon the performance of a praiseworthy act in particular, probably constitutes one of the roots of the tannaitic *ברכת המצות*. In any case, the resemblance between the *ברכת המצות* and this popular practice may explain the notable absence of the *ברכת המצות* from *m. Berakhot*. Both the Mishnah and the Tosefta include long sections on blessings before consumption of food (*m. Ber.* 6:1–7; *t. Ber.* 4), after consumption of food (*m. Ber.* 6:8–8:8; *t. Ber.* 5:14–6:1), and upon seeing various phenomena (*m. Ber.* 9; *t. Ber.* 6:2–6), but the Tosefta’s discussion of the *ברכת המצות* (*t. Ber.* 6:9–15) has no parallel in the Mishnah.²² If prayers before undertakings evoked gentile or sectarian practice (as suggested by *t. Šabb.* 7:22), and thanksgiving prayers over good deeds were common in certain non-rabbinic circles (as possibly indicated by the passages from Tobit and Philo, although these texts of course predate the rabbinic movement proper), then the Mishnah’s omission may be polemical, and reflect a principled opposition to the frequent (or even superstitious) usage of God’s name that it sees implicit in the general rule of *ברכת המצות* in *t. Ber.* 6:9.²³

21 Δεῖ γὰρ πάσης πράξεως καθαρᾶς ἀρχήν [εἶναι] τὴν πρὸς θεὸν εὐχαριστίαν καὶ τιμὴν. See also *Praem.* 56. We may note that *Neofiti* (Diez-Macho ed., 147) to Gen 24:52, the text upon which Philo comments, introduces language echoing *t. Šabb.* 7:22: דאברהם מליהון והוה כד שמע עברא דאברהם מליהון. But ראודי רשבח לשמה [ד] ייי כנימוס ארעא for example, Gen 24:26; Exod 34:08; Deut 26:3.

22 Nor does the Mishnah have anything corresponding to *t. Ber.* 5:22, which legislates *ברכות המצות* over the preparation and consumption of certain offerings. A reference to blessings over the Passover and the accompanying sacrifice does occur in *m. Pesah.* 10:9, and to judge from the Tosefta parallel (*t. Pesah.* 10:13) לויכל הפסח וכו' these fall into the category of *ברכת המצות*. For allusions to other blessings that might be construed as *ברכות המצות* see *m. Ma'as. Š.* 5:11 (discussed below); *m. Meg.* 4:1–2; *m. Nid.* 6:10. What the Mishnah lacks is any general statement about blessings over *מצות* akin to what one finds in *t. Ber.* 6:9–14. On the general absence of *מצות* in the sense of “commandment” from the Mishnah relative to the Tosefta see Marc Hirshman, “לדרכה של מחשבת חז”ל,” *WCJS* 10 (1990) C.1.54–60. Most of the instances in the Tosefta are aggadic or quasi-aggadic, so that their omission from the Mishnah is unsurprising, but the Mishnah’s failure to discuss the *ברכת המצות*, a halakhic topic, demands explanation.

23 The existence of opposition in some circles to broad application of the Tosefta’s dictum may also lie at the background of a story recorded in *y. Ber.* 6:1 (10a) (the continuation of which was cited in n. 9 above). The *amoraim* R. Ḥaggai and R. Yirmiya travel to a “waters of purification.” (Read *מִי חֲטָאתָה* [MSS Vatican, Paris, and London] rather than *חֲטָאתָה* [MS Leiden and the *editio princeps*]). As the unsatisfactory efforts of the traditional commentaries *ad loc.* demonstrate, the latter is impossible in context. Cf., in light of the reading *מִי חֲטָאתָה*, the Qumranic blessing over

מצוה AND ברכת המצות

The development from the practice of election blessings, and expressions of praise in connection with virtuous undertakings, to the Tosefta's insistence that one recite a blessing over "every מצוה," likely owes less, in the end, to any innovation in the application or understanding of blessings than to the reinvention in tannaitic literature of the category מצוה. In biblical literature (particularly in the Priestly sources and Deuteronomy) and at Qumran, מצוה, in the context of the relationship between human beings and God, is in almost all cases extremely abstract: it describes the entire set of divine directives.²⁴ In tannaitic sources, the category retains this broad reference, but it comes to center, paradigmatically, on discrete, positive ritual observances. Once this shift occurs – once such observances come to define the category – the emergence of a general rule of blessings over מצוה follows naturally.

The characterization of the category מצוה in tannaitic literature is complex and multifaceted, and I deal with it at length elsewhere.²⁵ Here it will suffice to highlight the phenomenon of stock מצוה. A denizen of the American Northeast, pressed to name a bird, more readily thinks of robins than of penguins. Whatever the definition of *bird* to which he would accede, his mental category of *bird* has the robin at or near its center, and the penguin at its periphery.²⁶ Likewise, when *tannaim* talk about מצוה as a category, they regularly call to mind only a subset of these norms.

When *m.Ned.* 2:2 and its parallel *t.Ned.* 1:5 take up the issue of vows of non-performance of מצוה, the examples they consider are *sukkah*, *lulav*, and *tefillin*. The corresponding discussion in *m.Šebu.* 3:8 of oaths of non-performance of מצוה takes up the same three cases. According to *t.Ter.* 1:10, a guardian of orphans may spend the orphans' money to provide them with "a *sukkah*, *lulav*, *šišit*, and all the מצוה in the Torah." When R. Ishmael speaks of "beautifying" God through the מצוה, he offers the *lulav*, *sukkah*, and *šišit* as illustrations (*Mek. R. Ish. Shirah* 3).²⁷ R. Meir observes that מצוה "surround" the Jew: "*tefillin* on his head, *tefillin* on his arm, a *mezuzah* at his entrance, and four *šišit* surround him" (*t.Ber.* 6:25).²⁸

ritual purification referenced above.) "R. Ḥaggai leapt and blessed upon them. R. Yirmiya said to him: 'You have done well, for all the commandments require a blessing.'" That R. Ḥaggai took pains to recite the blessing, and that R. Yirmiya praised him for this, suggests that others did not accept R. Yirmiya's principle, or at least his application of the principle to the case at hand.

24 See TDOT 8.505–14, s.v. מצוה (Baruch A. Levine, Helmer Ringgren).

25 See my "Duties and Ends"; *What is Good*.

26 For the cognitive semantics summarized here see, for example, George Lakoff, *Women, Fire and Dangerous Things: What Categories Reveal about the Mind* (Chicago: Univ. of Chicago Press, 1987).

27 Horowitz ed., 127.

28 See the parallel in *Sifre Deut.* 36 (Finkelstein ed., 67). In the continuation it is observed that even

In all of these cases, מצוה occurs without qualification, as a category term, even though, in context, only positive commandments are in view. Thus we can hardly imagine a guardian expending funds to prevent orphans from, for example, committing idolatry. Likewise the notion of blessing before performance of a מצוה assumes performance. In *t.Ber.* 6:18, too, it is observed that אין הנשים חייבות במצות “women are not obligated in commandments,” despite the fact that their exemption is only from positive (time-bound) commandments. This much is made explicit in *t.Qidd.* 1:10, which takes *sukkah*, *lulav*, *tefillin*, and *ṣiṣit* as examples of this subset of commandments. Thus, while מצוה can, in tannaitic literature, refer to prohibitions, most obviously in the phrase מצוה לא תעשה (or מצוה בלא תעשה), the paradigmatic מצוה is positive.

The occurrence of *sukkah*, *lulav*, *ṣiṣit*, and *tefillin* as stock examples in all of the above cases reinforces the association of מצוה with positive performance by centering the category around a paradigmatic list of positive commandments.²⁹ The ritual character of these four commandments no doubt contributes to their salience, for rituals (unlike, for example, the duty to return a neighbor's wandering animal) plainly evoke God, the author of the מצוה. Their salience has probably to do, too, with the fact that they depend on tangible, visual objects.³⁰ Moreover, the circumstances of their performance are well-defined: it is clear

when one enters the bathhouse, he is accompanied by a מצוה, namely, circumcision.

29 On “*sukkah*, *lulav*, and *tefillin* as a kind of stock example” see Judah Goldin, *The Song at the Sea: Being a Commentary on a Commentary in Two Parts* (New Haven: Yale Univ. Press) 114. “M. Shabbat 3:8” in Goldin’s discussion is an error for *m.Šebu.* 3:8. See also *t.Hag.* 1:2, on the legal status of the minor. The pericope addresses many topics, but only in connection with three things is the minor characterized as חייב: *sukkah*, *lulav*, and *ṣiṣit*. Under contextual pressure, other lists sometimes occur. Thus, for example, *t.Ber.* 3:19 dictates that one who intends to set out on a journey should, before doing so, “take the *shofar* and blow, the *lulav* and shake it, the *megillah* and read therefrom.” Because the context requires commandments whose fulfillment is punctual, *ṣiṣit* and *tefillin*, worn all day, do not occur. Nor could *sukkah* reasonably occur, whether building it or dwelling in it. For similar reasons, *t.Šabb.* 1:7, which concerns stopping (from work, study, or eating, according to different explanations: see Lieberman, *Tosefta Ki-Fshuṭah*, 3:5–6) to perform “all the מצוה in the Torah,” lists specifically *megillah*, *hallel*, *shofar*, and *lulav*. But on the latter see *y.Šabb.* 1:2 (3b) for incorporation of *tefillin* and construction of the *sukkah*. In Elizabeth Shanks Alexander’s analysis of *t.Qidd.* 1:10 (“From Whence the Phrase ‘Timebound, Positive Commandments?’” *JQR* 97 [2007] 317–46), the fact that the מצוה specified therein (*sukkah*, *lulav*, *tefillin*, *ṣiṣit*) constitute stock examples is not given due weight. While Alexander may be correct in supposing that the origin of the category “positive, time-bound commandment” lies in exegesis of the law of *tefillin*, there is no direct line between such exegesis and the altogether conventional occurrence of *tefillin* in *t.Qidd.* 1:10. At the same time, we may suggest that the paradigmatic character of *tefillin* may have played a role in allowing it to serve (as Alexander supposes it did) as a basis for generalization about מצוה.

30 Cf. Matt 23:5: “They do all their deeds to be seen by others, for they make their amulets (φουλακτῆρια) broad and their fringes long.” On this verse see Jeffrey H. Tigay, “On the Term Phylacteries (Matt 23:5),” *HTR* 72 (1979) 45–53.

(at least in broad strokes) *when* they must be performed and *how*. As we have seen, the four are characterized as time-bound commandments, and *Sifre Deut.* 82 also offers *lulav* and *šišit* as examples of institutions subject to the prohibition against adding or subtracting.³¹

Against the background of blessings highlighting Israel's election, and blessing practices associated with undertakings in general, and with good deeds specifically, the development of a category of מצוה centered around discrete, positive ritual acts called forth, as it were, the notion of a ברכת המצות. Once מצוה acquired this paradigm, the Tosefta could articulate a general principle mandating that מצוה take blessings, even though it did not mean thereby to insist that everything that one might, upon reflection, categorize as a מצוה — refraining from idolatry, for example — is subject to this rule. The basic innovation in the category of ברכת המצות thus lies, ultimately, in tannaitic reconceptualization of the category מצוה. Or, to put the point negatively, the category of ברכת המצות does not exist before tannaitic literature first and foremost because pre-tannaitic Judaism has nothing quite like its concept of מצוה.

TITHES AND THE ברכת המצות

While the above phenomena furnish the general background for the origin of the ברכת המצות, it appears that blessing practices associated with tithing (by which I mean, broadly, mandatory conveyance of produce or livestock to God or his representatives) played a special role in the category's emergence. My argument develops in three parts. First, I demonstrate that tithing is closely connected in pre-tannaitic literature with blessing God. Second, I show that tannaitic sources devote unusual attention to the ברכת המצות over tithing. I then collect evidence that suggests that the *tannaim* took tithing as a locus for thinking about מצוה as a category. These conclusions point to tithing as an important conduit through which blessings came to be associated at a general level with the category of מצוה.

In his observations on the barley offering, Philo takes the position that the donation of tithes represents an expression of thanks to God for the produce from which they are taken. As barley is inferior to wheat, the offering should, Philo reasons, properly come from wheat. But wheat is not yet in season, "and [it would be] . . . unlawful to enjoy and partake of any form of food for which thanks had not been offered in the proper and rightful manner" (*Spec.* 2.175). The barley offering evidently constitutes a form of thanksgiving that licenses consumption of the remainder of the crop. It has indeed been suggested that the blessing before consumption of food, which is amply attested in tannaitic

31 Finkelstein ed., 148.

sources, at Qumran, and among early Christians, constitutes something of an analogy to or substitute for the tithe among groups dissociated from or otherwise without access to the Temple.³² The relationship between tithes and the blessing before consumption of food is graphically conveyed by the immediate juxtaposition of these topics in the fragmentary 4Q271 2, 1–5:

1 [...] מגורן יורד את העשרון מן החו[מר היא הא]יפה 2 [...] האיפה והבת[ב]
תכון אחד שניהן ומן [החטים ש]שית 3 [האיפה לחמר ...]ה[ע]ץ אל יבדל איש
להרים לשה [את]ד מן המאה 4 [ואל] יאכל איש [...] ומן הגנה טרם ישלחו
הכזה[נים את ידם 5 [לברך] לריאשונה

1 [...] from the threshing floor he shall deduct the tenth of the ho[mer, which is an e]phah 2 [...] the ephah and the bath are both the same measure, and from [the wheat a si]xth 3 [of an ephah per homer . . .] tree. Not (*sic*) should separate himself to offer of the lambs, [on]e from every hundred. 4 [No-]one should eat [...] and from the garden before [the pri]ests have stretched out their hands 5 [to ble]ss (it) first.³³

Tithing (lines 1–3) and blessing (lines 4–5) occur in this passage as two stages in the preparation of food for consumption.

A second point of intersection between tithing and blessing in pre-tannaitic literature emerges from a different remark by Philo. He contrasts the produce given to the priests by Jews with tribute extracted by rulers from their cities. The cities give up the tribute “under compulsion and reluctantly and groan under the burden” (Spec. 1.143). Jews, however,

pay gladly and cheerfully. . . . [A]t each of the yearly sessions they make their contributions with benediction and thankfulness (εὐφρομίας καὶ

32 For sources and analysis see Baruch M. Bokser, “*Ma’al* and Blessings Over Food: Rabbinic Transformation of Cultic Terminology and Alternative Modes of Piety,” *JBL* 100 (1981) 557–74. In the Christian case the Eucharist constitutes the most obvious example; on its relationship to blessings over food in other contexts see most recently Clemens Leonhard, “Blessings over Wine and Bread in Judaism and Christian Eucharistic Prayers: Two Independent Traditions,” in Albert Gerhards and Clemens Leonhard, eds., *Jewish and Christian Liturgy and Worship: New Insights into its History and Interaction*, JCPs 15 (Leiden: Brill, 2007) 309–26. For Paul’s references to the Eucharist in 1 Corinthians 10–11 and their relationship to rabbinic law see Peter J. Tomson, *Paul and the Jewish Law: Halakha in the Letters of the Apostle to the Gentiles*, CRINT III.1 (Minneapolis: Fortress Press, 1990) 139–42.

33 For the sake of typographical and analytical simplicity I have quoted the text and translation from Florentino García Martínez and Eibert J. C. Tigchelaar, *The Dead Sea Scrolls Study Edition* (2 vols.; Leiden: Brill, 1997) 1:618–19. For a revised reconstruction and translation of lines 1–3 see Aharon Shemesh, “The History of the Creation of Measurements: Between Qumran and the Mishnah,” in Steven D. Fraade et al., eds., *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls: Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature*, 7–9 January, 2003 (Leiden: Brill, 2006) 147–73.

εὐχαριστίας), men and women alike, and with a zeal and readiness which needs no prompting and an ardor which no words can describe.

Because the tithe commandment entails considerable financial loss, fulfillment thereof is apt to be grudging.³⁴ The liturgies to which Philo refers have at least the effect, if not the purpose, of signaling the contributors' willingness. The willing donation of tithes and charity is also represented in other Second Temple texts, and in early Christian and tannaitic literature.³⁵

While the Mishnah, as noted above, makes no reference to the *ברכת המצות* as a category, it does allude to blessings over tithing. *m.Maʿaš.ḏ.* 5:11 comments on Deut 26:13, the declaration recited upon completing the full three-year cycle of tithing:

ולא שכחתי לא שכחתי מלברךך ומלהזכיר שמך עליי

And I have not forgotten (Deut 26:13). I have not forgotten to bless you and to recall your name over it.³⁶

As *ש-כ-ח* and *ז-כ-ר* represent antonyms, the negation of the first (*לא שכחתי* "I have not forgotten") implies the second (*להזכיר* "to recall," that is, to mention), and thus alludes to a blessing over tithes. It is possible that the Mishnah refers not to a blessing in the technical sense, but rather to thanksgiving or praise of a more general sort. But the biblical context — a declaration claiming precise observance of the law of tithes — suggests that a blessing proper is meant.³⁷

A blessing over tithing occurs among the examples of the *ברכת המצות* in *t.Ber.* 6:9–14. This is at first glance unremarkable; many other commandments occur in the list. But closer analysis shows that the inclusion of tithing is in fact

34 For a detailed survey of the typical first century C.E. Palestinian Jew's burden in tithes and taxes, see Ed Parish Sanders, *Judaism: Practice and Belief, 63 BCE–66 CE* (Philadelphia: Trinity Press International, 1992) 146–69.

35 For some of this material see Yochanan Muffs, *Love and Joy: Law, Language and Religion in Ancient Israel* (New York: Jewish Theological Seminary of America, 1992) 125–30, 165–93; Deborah Dimant, "The Book of Tobit and the Qumran Halakhah," in Deborah Dimant and Reinhard G. Kratz, eds., *The Dynamics of Language and Exegesis at Qumran* (Tübingen: Mohr Siebeck, 2009) 127–28. Muffs (174) cites Philo's contrast between the Jewish tithe and the royal tribute, but omits Philo's reference to blessings. See also the blessings accompanying gifts of oil, cheese and olives in chapters 5–6 of the Apostolic Tradition, discussed in Paul F. Bradshaw, et al., *The Apostolic Tradition: A Commentary* (Hermeneia; Minneapolis: Fortress Press, 2002) 49–54.

36 This line is paralleled in *Sifre Deut.* 303 (Finkelstein ed., 321).

37 A later interpreter, Abayye, who adduces the text in *b.Ber.* 40b, clearly assumes as much. See also *Sifra Qedoshim* 4:1 (Weiss ed., 90b). From the plural form of the word *הלולים* in Lev 19:24, a verse that legislates concerning produce of the fourth year, the anonymous *Sifra* concludes: *מלמד* "שהוא טעון ברכה לפני ולאחריו" "This teaches that it requires a blessing before it and after it." Here, too, the nature of the blessing preceding the produce is not altogether unambiguous, though it is construed in the *Bavli* (*b.Ber.* 35a) as a blessing over food (*ברכת הנהנין*).

significant. The list runs as follows: *sukkah*; *lulav*; *šišit*; *tefillin*; slaughtering and covering of the blood; circumcision; and tithing. In the version of the Tosefta in MS Vienna, a שהחיינו blessing occurs in connection with the first four items and with tithing. But MSS London and Erfurt assign a שהחיינו blessing only to the first four. This latter version is not only better attested but more logical: in the first four cases, the שהחיינו is recited over the creation of the ritual object, but in the last, it attaches to the act of “going to separate *terumah* and tithes,” which involves no object, and indeed, hardly constitutes a distinctive act at all. If, however, MS Vienna is secondary, then we are led to posit that the list, at one point, contained only *sukkah*, *lulav*, *šišit*, *tefillin*, and tithing; in this way, the attachment of the שהחיינו to tithing in MS Vienna can be understood as an attempt to homogenize the list. If the list also contained, from the beginning, covering/slaughtering blood and circumcision, then one would have expected them, too, to have received שהחיינו blessings. Further evidence for this reconstruction comes from the version of the list in *γ.Ber.* 9:3 (14a), which has *sukkah*; *lulav*; *mezuzah*; *tefillin*; *šišit*; tithing; slaughtering/covering; and circumcision. The fact that slaughtering/covering and circumcision occur in a different place on the list, indeed last, suggests that they are secondary. The Tosefta version offers a clue as to how this addendum entered the pericope. In *t.Ber.* 6:9–11, the Tosefta discusses one who makes a *sukkah*, *lulav*, *šišit*, or *tefillin* for himself (לעצמו). This *Leitwort* inspires an excursus on cases where a single act with multiple parts (slaughtering and covering) or multiple actors (the circumciser and the father) takes multiple blessings, one for each part or actor (לעצמו) (*t.Ber.* 6:12–13).³⁸ The shift in the signification of the *Leitwort* confirms the distinctive and secondary character of the slaughtering/covering and circumcision items.

The original list, then, probably contained only *sukkah*, *lulav*, *šišit*, *tefillin*, and tithing. The first four items on this list are all typical מצות, often mentioned as stock examples in other contexts in tannaitic literature, as I have noted above. But tithing is not elsewhere employed as a stock מצות. We may infer that, unlike the stock examples, tithing was deliberately included in the list because of an existing close connection between tithing and the pericope’s subject, the ברכת המצות.

It appears likely that the Tosefta’s notion of a blessing over מצות as a class rests to an important degree on the foundation of the blessing practices associated with tithing. Blessings over tithing would, at an early stage, have come to be understood as the fulfillment of an obligation to bless God over מצות. This development would have found its inspiration in biblical law (*Deut.* 26:13–15), which mandates that the landowner, upon distributing all his tithes,

38 The multiple parts and actors compensate, from a structural perspective, for the absence of the שהחיינו blessing in these members of the list.

must declare to God that he has obeyed all of the rules governing them. This declaration constitutes one of the few liturgical statements prescribed in the Pentateuch to accompany a ritual act. The speaker makes reference in the declaration to God's מצותי: לא עברתי ממצותיך *I have not transgressed of your commandments* (v. 13). This phrase represents the only case in the Pentateuch, indeed in classical Hebrew generally, where ע-ב-ר takes מצוה as its object.³⁹ The phrase thus anticipates the basic rabbinic dichotomy מצוה/מעבירה, and the Rabbis, reading this verse, may well have been inspired to take the tithing liturgy as a generative model for all מצות.⁴⁰ This line of thought would have been further encouraged by the end of the biblical declaration, where the speaker completes the account of his faithfulness with a reference to אשר צויתני *all you have commanded me* (v. 14).⁴¹

Another generalization from the tithing declaration to מצוה as a category occurs in *t.Ma^as.Š.* 5:24. After its exegesis of the first part of Deut 26:13 (בערתי), and immediately before its exegesis of v. 15, where the declarant turns to pray to God for well-being – in other words, precisely where one would expect exegesis of the references to מצוה in vv. 13–14 – the following observation occurs: כל העסוקין במצות פיהם פתוח בתפילה לפני [ה]מקום: “All who are engaged in מצוה, their mouths are open in prayer to God.” According to Lieberman’s reasonable explanation, the fact that the speaker, after announcing his observance of the law of tithes, appeals to God’s providential care serves as the basis for the claim that one who performs a מצוה is in a position to have his prayer answered by God.⁴² This statement supports my claim that the category of ברכת המצות was patterned, at least in part, on the blessing over tithes, for in this statement, too, *tannaim* use the text of tithing in Deut 26:13–14 to meditate on מצוה as a whole, and specifically from a liturgical perspective (“their mouths are open in prayer to God”).

- 39 The preposition מן before מצותיך in this phrase was understood by rabbinic interpreters as having a partitive force, thus: “[a מצוה] from your מצוה.” For the interpretation of the words לא עברתי ממצותיך in *Sifre Deut.* 303 (Finkelstein ed., 321), see Isaac B. Gottlieb, “Midrash as Biblical Philology,” *JQR* 75 (1984) 150. This pericope takes the words as a declaration that tithes were not separated, against the law, from one category of food on behalf of another. On Gottlieb’s account, “*Sifre* to Deuteronomy evidently understood לא עברתי as ‘change’ rather than as BH ‘transgress.’” More precisely, the *midrash* took עבר both in the sense of “to transgress” – it is no coincidence that all of the actions disavowed are forbidden – and in the sense of “to remove” (which latter seems preferable to Gottlieb’s “change”).
- 40 It is noteworthy, too, that the commandments reviewed in these verses (Deut 26:13–14) divide sharply into positive (v. 13) and negative (v. 14), and thus anticipate the rabbinic division of the entire corpus of commandments along these lines.
- 41 See Sir 7:31: “Fear the Lord and honor the priest, and give him his portion, as is commanded (ἐντέταλται; Heb. צוּרַתָּה [Genizah MS A]) you” (RSV). Elsewhere in the book (Sir 15:20; 17:4; 24:8, 23; 45:3; 48:22), the verb ἐντέλλεσθαι is never used of specific commandments, but only of God’s commandments in general. On Sir 7:31 and its literary context see below, n. 48.
- 42 *Tosefta Ki-Fshutah*, 2:788–89.

CONCLUSION

I have offered a complex account of the emergence of the tannaitic category of blessings over a מצוה. In the pre-tannaitic period we find liturgical practices that look like the ברכת המצות: blessings that praise God for Israel's nomistic election, addresses to God in connection with pious undertakings. When in rabbinic circles the category of מצוה became more prominent, and more strongly centered around positive, ritual acts, some of these blessings were reconceptualized as "blessings over מצוה." The production of this category provided the foundation for the development of new blessings, over acts that had not previously enjoyed them. The tithing ritual, which was strongly associated both with pre-tannaitic blessings of various kinds and with the term מצוה, appears to have played a particularly important role in the articulation of the ברכת המצות as a category.

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APPENDIX

TITHES AND מצוה "ALMS"

I argue in the body of this essay for a close connection between tithes and the category of מצוה in tannaitic thought. Saul Lieberman, among others, has observed that in Hebrew and Aramaic sources from at least the third century (the amoraic period) forward, מצוה often carries the meaning "alms."⁴³ Given that tithes are perhaps the most important model for alms in rabbinic literature, alms constitute another locus for the intersection of tithes and מצוה.⁴⁴ Is this a coincidence? In particular, could the tannaitic link between tithes and מצוה, as detailed in this essay, have played a role in the latter term's acquisition of the meaning "alms"? Perhaps the most straightforward explanation for the development of the meaning "alms" rests on the association, particularly in post-tannaitic Hebrew, between מצוה and supererogation.⁴⁵ Once מצוה comes to refer less to commandments than to righteous behavior (much like biblical צדקה, which also becomes "alms" in rabbinic Hebrew), a narrowing to charity, as the paradigmatic kind of good deed, becomes natural. While not discounting this explanation, I suggest a different one in which tithes do play a role, albeit through a different association between tithes and מצוה from the one I have traced in the body of the essay.

In tannaitic literature, מצות כהונה sometimes refers to the class of things (produce, animals, portions of sacrifices) owed to priests, as, for example, in *Sifre Num.* 119: כל מצוות כהונה קנאן השם ונתנן לכהנים "All of the מצוות of the priesthood, God acquired them and gave them to the priests."⁴⁶ A similar usage is

43 See Saul Lieberman, "Two Lexicographical Notes," *JBL* 65 (1946) 69–72 (dating: 69 n. 22); Naphtali Wieder, *The Formation of Jewish Liturgy in the East and the West* (2 vols.; Jerusalem: Yad Ben-Zvi, 1998) 2:542 n. 225 (Heb.). מצוה occurs in (loose?) connection with charitable acts already in *Sir* 35:7, on which passage see David Henshke, *Festival Joy in Tannaitic Discourse* (Jerusalem: Magnes, 2007) 50–56 (Heb.), and the literature cited there.

44 The *Leitwörter* מעשר, צדקה, and מצוה interweave to great effect in Yannai's *qedushta*² to *Num* 18:25 (Zvi Meir Rabinowitz, *The Liturgical Poems of Rabbi Yannai According to the Triennial Cycle of the Pentateuch and the Holidays: Critical Edition with Introductions and Commentary* [2 vols.; Jerusalem: Bialik, 1987] 2:73–81 [Heb.]). To מצוות וצדקות in this poem (2:73 line 62) compare מצורן וצדקן at Wieder, *Formation*, 2:540 line 38.

45 On this association see Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (Cambridge, Mass.: Harvard Univ. Press, 1975) 337; Robert Goldenberg, "Law and Spirit in Talmudic Religion," in Arthur Green, ed., *Jewish Spirituality from the Bible Through the Middle Ages* (New York: Cross road, 1986) 236.

46 Cf. Horowitz ed., 145. The phrase also occurs earlier in the same pericope. Elsewhere (*Sifra Nedavah* 5:1, 10:1 [Weiss ed., 6a, 10a]), מצוה (ה) כה(ר)ונה refers to an element of the ritual procedure that must be performed by the priest (and not by a layman). For reasons I hope to detail elsewhere, I believe this usage of the phrase is secondary.

already attested in Neh 13:5, where Nehemiah reports on a Temple chamber in which were stored *the flour-offering, the frankincense, and the vessels, and the tithe of the grain, the wine, and the oil, the מצוה of the Levites and the singers and the gatekeepers, and the heave-offering of the priests*. The explanation for this usage probably lies in the same semantic process by which חק comes to mean both “statute, directive” (as in Lev 21:46 והמשפטים *these are the statutes and the laws*) and “portion, ration” (as in Prov 31:15 ותתן טרף לבייתה *and she gave game to her household, and ration to her maids*, and more pertinently, Lev 10:13, where Aaron and his sons are to eat of the remainder of the flour-offering, יהוה היא מאשי בניך חקך *for it is your portion and your sons’ portion from the Lord’s fire-offering*).⁴⁷

In *Sifra Milu'im* 1:1, מצוה seems also to carry the sense of “portion,” but expands beyond priestly gifts to include donations to the poor.⁴⁸ The lemma is Lev 8:25, which describes the wide assortment of sacrificial parts given by Moses to Aaron from the offering made in the tabernacle’s dedication ceremony.

אין לך כל דבר ודבר שאין בו מצות למקום פירות יש בהן מצות הרבה התרומה
והמעשרות והחלה והביכורים ההלקט והשכחה והפיאה

There is nothing in which there are not מצוה to God. Produce has many מצוה: the priestly gift, the tithes, the *ḥallah*, the first fruits, the gleanings, the forgotten sheaves, and the corner.⁴⁹

In the continuation, the *midrash* specifies other items and their מצוה: 1. the gates of houses and cities (the *mezuzah*); 2. clothing (*sha'atnez* and *ṣiṣit*); 3. “pure” animals (donation of the firstborn animal to God); 4. “impure” animals (exchange of the donkey); 5. wild beasts and birds (covering the slaughtered animal’s blood); 6. other animals (*herem* to God [Lev 27:28]). Then the *midrash* categorizes the sacrificial animals according to the portions that are burned on the altar. The expression מצוה למקום/מצוה occurs throughout this pericope, but nowhere else, to my knowledge, in tannaitic literature. Nor have I been able to find מצוה ל- with other names of God. It therefore seems likely that מצוה למקום means not “a commandment to God” (where the force of “to” is unclear) but “a portion to God,” precisely as in the case of the מצוה הכהונה (which, as the passage from *Sifre Num.* 119 quoted above states, is in fact, in origin, God’s). Almost all of the examples given by the *midrash* involve donations (charity, tithes,

47 חק and מצוה regularly pair in BH: see, for example, Deut 6:2; 1 Kgs 2:3; Neh 9:13.

48 The conceptual link between priestly gifts and donations to the poor is present already in Sir 7:29–36, but not under the rubric of מצוה. On Sir 7:29–36 and related texts see Gary A. Anderson, “Redeem Your Sins by the Giving of Alms: Sin, Debt, and the ‘Treasury of Merit’ in Early Jewish and Christian Tradition,” *Law and Spirit* 3 (2007) 54–56.

49 Cf. Weiss ed., 42a.

sacrificial obligations); the only true exceptions are *mezuzah*, *sha'atnez*, and *ṣiṣit*, and two of these, *mezuzah* and especially *ṣiṣit*, are, as noted above, stock examples of מצות.⁵⁰ We should probably assume that the original list consisted entirely of donations, and afterward, when the original sense of מצות/מצות למקום was obscured, these other items were added.

The *Sifra* pericope attests to the expansion of the scope of מצות “portion” beyond the sacred context to gifts to the poor. It may be, then, that מצות “alms” has its origin in מצות “portion.” The development “portion” > “alms” would, on this account, have been driven by the conceptualization of charity after the pattern of tithes. מצות comes to mean “alms” not, or not only, because almsgiving is the good deed *par excellence*, but because it is God’s portion.

50 Covering the blood seems to be imagined here as a substitute, in the case of profane slaughter, for sacrifice. On this substitution see Chapter Two in Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford Univ. Press, 1997).

The History and Meaning of the “Other” *Lekha Dodi* Poem(s)

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Shlomo Alkabetz's poem *Lekha dodi* is one of the most famous works of kabbalistic poetry. Yet Alkabetz's poem may not be the original version of *Lekha dodi*. An oft-ignored poem (poems?) containing the same refrain, and two near-identical verses, was published by Moshe ibn Machir, leader of a community in nearby Ein Zeitim, in סדר היום. In this paper, we analyze the history of this version of *Lekha dodi* and its relationship to that of Alkabetz, concluding that this version of *Lekha dodi* most likely predated Alkabetz's. It is a work with clear themes: the redemption of the past hinting at the redemption of the future, and veiled references toward messianism, in addition to numerous references to kabbalistic understanding. The *Lekha dodi* poem(s) of סדר היום shed further light on the mystical, national, and messianic understanding of Shabbat in sixteenth-century Safed.

The poem *Lekha dodi*, written by Shlomo Alkabetz (1505–75/7), is one of the most famous works of kabbalistic poetry, recited in all rites on Friday night.¹ It has been praised by scholars and writers alike.² For instance, Solomon Schechter wrote: “It is perhaps one of the finest pieces of religious poetry in existence, and has been translated by Herder and by Heine into German.”³

Yet Alkabetz's poem may not be the original version of *Lekha dodi*.⁴ An oft-ignored poem containing the same refrain and two near-identical verses was published by Moshe ibn Machir, leader of a community in nearby Ein Zeitim,

- 1 There are at least four traditions about how much of *Lekha dodi* to recite on a holiday which falls on Friday night: 1. Recite all of *Lekha dodi* (omitting Psalms 95–99); 2. Omit *Lekha dodi* entirely and begin with Psalms 92–93. Omit only the stanza להנער; and 4. Recite only the first two and final two verses of *Lekha dodi*. See Yitshak Yosef Cohen, “סדר קבלת שבת ופזמון לכה דודי,” *Meqorot veqorot* (Jerusalem: Reuven Mass, 1982) 91–92 and n. 84. In the early 1850s, Rabbi Joseph Aub of Mayence instructed his congregation to sing only three stanzas of the poem on every recitation: the first, second, and last. See Jakob J. Petuchowski, *Prayer Book Reform in Europe* (New York: World Union for Progressive Judaism, 1968) 121.
- 2 For examples, see Cohen, “סדר קבלת שבת,” 99; Abraham Schechter, *Lectures on Jewish Liturgy* (Philadelphia: Jewish Publication Society, 1933) 59. Amazingly, Schechter (56) claimed that “[t]he ideas expressed in ‘L'chah Dodi’ are not mystical. . . .” However, Reuven Kimelman's recent work has put that claim to rest; see his המשמעות המיסטית: לכה דודי וקבלת שבת (Jerusalem: Magnes, 2003).
- 3 Solomon Schechter, *Studies in Judaism* (3 vols.; Philadelphia: Jewish Publication Society, 1908) 2:228. Heine misattributed the poem to Yehudah Halevi. See Israel Davidson, אוצר השירה והפיוט (repr., 4 vols.; Hoboken: Ktav, 1970) 3:43.
- 4 Scholars are divided on this issue. We will investigate this debate below.

in סדר היום (1599).⁵ In this paper, we will analyze the history of this version of *Lekha dodi* and its relationship to that of Alkabetz. We will also investigate the poem's own references and meaning in the context of biblical, rabbinic, and Zoharic literature.

In 1917, Judah David (Julius) Eisenstein reprinted Machir's text in his collection of laws and customs, becoming the first modern scholar to reproduce this version of *Lekha dodi* outside סדר היום.⁶ However, in Eisenstein's printing, and in subsequent scholarly reproductions, the poem did not appear in its original form.⁷ Below we have reproduced the text that appears in the first printing of סדר היום.⁸

... ואמר פזמון א' או ב' ואלו הם

לכה דודי לקראת כלה, פני שבת נקבלה

זכור ושמור בדיבור אחד, נתן לנו המלך המיוחד, ה' אחד ושמו אחד,
לשם ולתפארת ולתפלה, לכה דודי וכו'

קדושת שבת הנחלתנו, ועל הר סיני קרבתנו, בתורה ומצות עטרנו,
וקראתנו עם סגולה, לכה דודי

נודה לך אלינו, כי ממצרים הוצאתנו, ומבית עבד' פדיתנו,
בכח ידך הגדולה, לכה דודי

5 Moshe ibn Machir, סדר היום (Venice, 1599) 43. A second copy was printed by Juan di Gara in Venice, 1605 (p. 42). This poem was preserved in later editions of סדר היום, although with certain errors. For example, see Moshe ben Machir, סדר היום (Jerusalem: Even Israel, 1996) 82. For an overview of Machir's activities and traditions, see Ronit Maroz, "חבורת ר' משה בן מכיר ותקנותיה" *Pe'amim* 31 (1987) 40–61.

This poem has been neglected by recent scholarship on *Lekha dodi*. For instance, in writing what is sure to be the definitive history and interpretation of Alkabetz's *Lekha dodi*, Kimelman relegates the poem published by Machir to a footnote (לכה דודי וקבלת שבת, 25 n. 155), and does not bother to reproduce the text. This, despite his belief that Machir's version likely preceded Alkabetz's poem. Below we will deal with the question of whether there are one or two poems in סדר היום.

6 Judah David Eisenstein, אוצר דינים ותנהגים (New York: Hebrew Publishing Co., 1938 [1917]) 193.

7 Eisenstein removed the final verse (or start of the second *piyyut*): הוצאתנו, פלא, עושה פלא, אתה האל עושה פלא, מבית כלא, הורשתנו בית מלא, ארץ צבי מהוללה, לכה דודי ויאמ' מזמור שיר ריאמ' מזורר שיר. By contrast, A. Schechter (*Lectures on Jewish Liturgy*, 59) printed this final verse, but left out the interceding sentence: ליום השבת וכו'. Abraham Zvi Idelsohn and Mordechai Hacohen omitted the same line when reprinting the poem, and the latter also (inadvertently) cut the first half of the fifth stanza: אתה, ישראל נאג'ארה ושריתר", *Hashiloah* 37 (1920) 27 n. 1; Mordechai Hacohen, "מנהגי ליל שבת קודש", *Maḥanayim* 85–86 (1963) 36. Issachar Jacobson failed to correct Hacohen's mistake in his analysis; see Jacobson, (נתיב בינה, 5 vols.; Tel Aviv: Sina'i, 1968) 2:31–32. In addition to the confusion surrounding the end of the poem, many of these reproductions also changed various words within the text.

8 The author wishes to thank David Wachtel and the staff of the Rare Book Room at the Jewish Theological Seminary of America for facilitating a viewing of this copy and providing assistance in interpreting other manuscripts.

בתוך ים סוף הדרכתנו, ובנפול אויב שמחתנו, חיים וחסד עשית עמנו,
להעבירנו במצולה, לכה דודי

אתה אלהי האלהים, ומי כמוך באלים, משפיל גאים המגדילים,
ומרי' אביון לגדולה, לכה דודי

בואי בשלום עטרת בעלה, וגם בשמחה ובצהלה, תוך אמוני עם סגולה,
בואי כלה, בואי כלה, בואי כלה, בואי כלה, בואי לשלום שבת מלכתא

ויאמ' מזמור שיר ליום השבת וכו'

אתה האל עושה פלא, הוצאתנו מבית כלא, הורשתנו בית מלא,
ארץ צבי מהוללה, לכה דודי

We will translate and investigate the references in this poem below. First, however, we will attempt to answer the following three questions: 1. How many poems are represented here?, 2. Why is the verse *בואי בשלום* longer and out of meter compared to the other verses? and 3. Which poem came first: the above poem or Alkabetz's?

Scholars are divided as to the number of poems listed here. Isaac Maarsen, Abraham Schechter, Yitshak Yosef Cohen and Mordechai Hacohen understand this poem as a single unit with seven stanzas.⁹ Hacohen notes that the poem is interrupted by the recitation of Psalm 92, but refers to the verse *אתה האל עושה פלא*, הוצאתנו מבית כלא, הורשתנו בית מלא, ארץ צבי מהוללה, לכה דודי as the seventh verse. He explains this poem as parallel to the seven days of the week: the first six verses correspond to the six days preceding Shabbat, while the last verse (following Psalm 92) corresponds to Shabbat.¹⁰

While Hacohen's understanding is tempting because of the connection to the number seven, his reading ignores the simple meaning of the full text, reproduced above.¹¹ Machir introduces the poems explicitly with the phrase: *ואלו הם*, indicating that there are (at least) two poems to follow.¹² Yehuda Leib Zlotnik

9 Isaac Maarsen, "קבלת שבת: בקורת היסטורית" (second of two parts), *Jeschurun* 9:7/8 (1922) 85; A. Schechter, *Lectures on Jewish Liturgy*, 58–59; Cohen, "סדר קבלת שבת," 98; Hacohen, "מנהגי ליל," 36.

10 Interestingly, Abraham Berliner counted seven verses, excluding the final stanza, by counting the refrain *דודי לכה* as its own verse; see Berliner, *כתבים נבחרים* (2 vols.; Jerusalem: Mossad Harav Kook, 1945) 1:43. For the relationship between the six psalms of standard *qabbalat shabbat* liturgy and the six days of the week in kabbalistic understanding, see Arthur Green, "Some Aspects of Qabbalat Shabbat" in Gerald Blidstein, ed., *Sabbath: Idea, History, Reality* (Beer Sheva: Ben Gurion Univ. of the Negev Press, 2004) 109 n. 39.

11 Indeed, Daniel Sperber demonstrates how the number seven is crucial to understanding many of the themes of *qabbalat shabbat*; see his *מנהגי ישראל* (8 vols.; Jerusalem: Mossad Harav Kook, 1990–2007) 1:67–68. But this poem may reach the number seven if one includes the refrain. This is how Kimelman finds the number 10 (representing the *sefirot*) in Alkabetz's work. See Kimelman, *לכה דודי וקבלת שבת*, 46.

12 Cohen, "סדר קבלת שבת," 98, claims that Machir only cites one of the two *piyyutim*, and the sec-

correctly notes that the verse beginning with **פלא עושה** is in fact a second poem in which only the first verse is preserved.¹³ A poem of six verses also matches the context of the poem in the service, because it parallels the six psalms which precede Psalm 92. These six psalms (95–99, 29) are introduced in **סדר היום**, and therefore it is logical that Machir would include a poem with six verses, paralleling the six psalms.¹⁴ In addition, as Yaakov Bazak notes, the verse **בואי בשלום עטרת בעלה** is the poetic peak because only here does the poet address Shabbat directly.¹⁵ Therefore, literarily, the poem logically ends with this verse.

Recognizing that the verse ... אתה האל עושה פלא is actually the beginning of a separate *piyyut*, we can now begin to understand why the verse beginning בואי בשלום עטרת בעלה is longer than the other verses which precede it. This verse is in fact the final verse of the poem. The words that follow, בואי כלה, בואי, are not part of the poem at all, but a liturgical formula based on the traditional Shabbat greetings of R. Hanina and R. Yannai.¹⁶ Therefore, the poem ends with the verse: וגם בשמחה, בואי בשלום עטרת בעלה, and serves as an introduction to the words: בואי כלה, בואי, בואי, followed immediately by Psalm 92.¹⁷

and one might have been that of Alkabetz. This is because Cohen believes that Alkabetz's poem preceded the one in סדר היום. This explanation does not seem to match the simple meaning of the text in סדר היום.

- 13 Yehuda Leib Zlotnik, "לכה דודי נצא השדה," *Nerot Shabbat* 77 (1946) 14. Kimelman (1996) does not discuss the number of *piyyutim* in סדר היום explicitly, but also seems to conclude that there are two poems in סדר היום, noting that the poem has six stanzas, not seven.
- 14 Kimelman, 25, although, see p. 23, for a previous work, *Heichal haqodesh* of R. Moshe Elbaz, which cited these psalms without *Lekha dodi*. Green ("Some Aspects," 105) calls these works contemporary.
- 15 Yaakov Bazak, "עיונים ב'לכה דודי,'" *Sinai* 102 (1988) 187. In his structural analysis of Alkabetz's *Lekha dodi*, Hillel Horowitz claims that the final verse, ברואי בשלים, is in fact an addition to the essence of the poem. The final verse reflects the direct greeting of Shabbat, while the preceding verses reflect a preparation to greet the Shabbat; see Horowitz, "לכה דודי ומקומו," *Shmaitin* 35 (1972) 142 n. 3. Zev Yavetz thought the composition of this verse preceded the rest of the poem. See Zev Yavetz, סדור עבודת הלבבות (Jerusalem: Kiryah Ne'emanah, 1976) 140. We will consider below why Alkabetz included this verse, despite the fact that it does not fit the acrostic of his name.
- 16 See *b.Šabb.* 119a: רבי חנינא מיעטף וקאי אפניא דמעלי שבתא, אמר: בואו ונצא לקראת שבת המלכה. רבי דאמר ר' חנינא: בואי כלה בואי כלה בואו ונצא לקראת כלה מלכתא; ואמרי לה: לקראת שבת כלה מלכתא. רבי ינאי מתעטף, וקאי ואמר: בואי כלה. See also R. Hananel's version (*b.B.Qam.* 32a–b), in which R. Hanina would dance. See Zlotnik, "לכה דודי נצא השדה," 13.
- 17 The original version, printed in סדר היום (Venice, 1599), is key in this understanding, for the words ברואי כלה appear four times in a row (twice to end the poem, and twice as a reflection of R. Yannai's actual practice). In addition, there is a colon separating the first two from the second two. In some reproductions of the סדר היום poem, however, the phrase ברואי כלה is only listed once

The practice of saying a separate liturgical formula beginning בואי כלה is mentioned in סדר היום itself, which notes immediately following the printing of the two poems that there are those who say בואי כלה seven times, corresponding in calculation to מספר קטן שכינה.¹⁸ However, the practice of reciting this formula predates Machir's סדר היום. Isaac ben Samuel of Akko (late thirteenth–early fourteenth century) complained that people were saying בואי כלה בואי כלה without proper intention.¹⁹ Luria himself advised his followers to recite the formula: שבתא מלכתא, בואי כלה, בואי כלה, two or three times.²⁰ In a Geniza fragment published by Solomon Schechter, the kabbalist Abraham Halevi also mentions a separate practice of saying a formula beginning בואי כלה, distinct from the poem *Lekha dodi*: כמה כתות יוצאים ע"ש מבעור יום לברשים לבנים ומקבלים: שבת וקורין מזמור הכו לה' בני אלים ופזמון לכה דודי ומזמור שיר ליום השבת ואומ' פני שבת וקורין מזמור הכו לה' בני אלים ופזמון לכה דודי ומזמור שיר ליום השבת ואומ' בואי כלה.²¹ In this practice, it seems that the worshiper may have simply recited the two words בואי כלה. In fact, some kabbalists used to recite a separate poem beginning with the words בואי כלה. The Kabbalist Abraham Galanti mentions that this poem was sung following the recitation of the Song of Songs: קורין שיר כלילת יופי כלולה בואי כלה, בואי.²² Perhaps he is referring to the poem written by Mordechai Dato, beginning: בואי כלה, בואי כלה. In any case, it is clear there is a practice of reciting a liturgical formula

(Idelsohn, "ישראל נאג'ארה ושירתו," 27 n. 1); twice (A. Schechter, *Lectures in Jewish Liturgy*, 59; Eisenstein, "מנהגי ליל שבת קודש," 36; Jacobson, "לכה דודי נצא השדה" (14), 32). Zlotnik (14) is the one scholar who reproduced the text correctly here. In addition, Hachohen reproduced the poem with the refrain דודי following the phrase בואי כלה, indicating that this phrase is still part of the poem. In the original version, however, בואי כלה does not appear following בואי כלה. Yehudah Razhabi implies that the end of the final verse, בואי כלה בואי כלה, is actually part of the liturgical formula; see his "לכה דודי של המקובל רבי שלמה אלקבץ ומקורותיו," *Maḥanayim* 6 (1993) 163. However the rhyme scheme and meter of the rest of the poem seem to indicate that the first two mentions of בואי כלה are still part of the poem, while the second two are the beginning of the formula, parallel to the two times R. Yannai used to say בואי כלה.

18 סדר היום (Venice, 1599) 43. This practice was followed later in the Yemenite tradition. See Hachohen, "מנהגי ליל שבת קודש," 37.

19 See Kimelman, "לכה דודי וקבלת שבת," 7 n. 44.

20 Sperber, "מנהגי ישראל," 137. See also Kimelman, "לכה דודי וקבלת שבת," 18 and 19 n. 122. Green, "Some Aspects," 104.

21 S. Schechter, *Studies in Judaism*, 297. See also the seventeenth-century Italian manuscript which advises one to say the poem *Bar Yohai* "בואי כלה," Moshe Halamish, *הקבלה בתפילה* (Ramat Gan: Bar-Ilan Univ. Press, 2000) 509.

22 S. Schechter, *Studies in Judaism*, 297. It is possible that this was simply Galanti's way of referring to the poem we know as *Lekha dodi*; however, why call a poem by its final verse, not by its opening verse or refrain? Galanti mentions a separate practice of reciting a poem following Psalm 29 called שבת של פזמון (p. 295), which may indicate the poem *Lekha dodi* (of סדר היום or Alkabetz) or another poem. In either case, it is a distinct work from the poem/recitation called בואי כלה, mentioned separately.

23 Cited in Kimelman, "לכה דודי וקבלת שבת," 23. For additional poems beginning with the words בואי

beginning with the words בואי כלה, and the *Lekha dodi* poem of סדר היום served as an introduction to that formula.

If Machir did include two *piyyutim*, both with the refrain לכה דודי, it seems clear that there were numerous compositions based on a common refrain circulating in and around Safed in the late sixteenth century. We will now explore whether or not those compositions appearing in סדר היום preceded Alkabetz's *Lekha dodi*.²⁴

Scholars dispute the question of which of the poems came first. Those who claim that Alkabetz's poem preceded those of סדר היום base their evidence on the publication dates of the poems.²⁵ Yitshak Yosef Cohen is the first to note that Alkabetz's *Lekha dodi* appeared in a book entitled ספרד השנה כמנהג ספרד, published in Venice in 1584.²⁶ This Siddur describes a service beginning with Psalm 29 (p. 108b), followed by this instruction: ואחר כך אומרים זה הפיוט נאה ומשובח יסדו ובנאו החכם האלהי כמ"הרר שלמה הלוי בן אלקאביץ ז"ל בעיר צפת תבנה ותכונן במהרה בימינו אמן: להן שובי נפשי למנוחיהי.²⁷ This is then followed by Alk-

כלה, see Davidson, אוצר, 2:11, nos. 243 and 244.

24 This question is of course complicated by the fact that we have no definitive knowledge of additional poems besides the two in סדר היום and that of Alkabetz employing the refrain לכה דודי. לקראת כלה. פני שבת נקבלה. However, it is possible that even if Alkabetz's *Lekha dodi* preceded those in סדר היום, others may have preceded Alkabetz's. Idelsohn theorizes that there were many poets who based poems on the statements in the Talmud (*b. Sabb.* 119a and *b. B. Qam.* 32a-b). See Idelsohn, "ישראל נאג'ארה ושירתו," 27, n. 1. This notion is aided by Bazak's theory that the refrain *Lekha dodi* was sung by the congregation, and only the prayer leader knew the verses (See Bazak, "עיונים," 185). Perhaps the refrain became well-known, and different verses were written at different times. For a brief discussion of which poem came first, see: Moshe Halamish, קבלות (Jerusalem: Orhot, 2006) 230-31. Halamish ultimately sides with those who believe Alkabetz's came first.

25 Idelsohn, "ישראל נאג'ארה ושירתו," 27 n. 1, states simply that an author saw the poem of Alkabetz and reworked it. Maarsen ("קבלת שבת," 85-86) offered a reason to support this theory, saying that the author of *Hemdat yamim* did not mention the composition of סדר היום in his list of *piyyutim* which were approved by Luria. However, Kimelman notes (לכה דודי וקבלת שבת, 18) that one cannot rely on the testimony of *Hemdat yamim*, since this book was not published until 1731, long after the composition of both poems. Indeed, Kimelman writes, *Hemdat yamim* claims that Luria knew of Alkabetz's poem, when contemporary writings of Luria indicate that he did not know the poem.

26 Cohen, "סדר קבלת שבת," 76. Prior to Cohen, scholarship did not seem to be aware of this printing. See, for instance, Berliner, כתבים נבחרים, 44. Razhabi ("לכה דודי," 164), apparently following the opinion of previous scholars, notes that *Lekha dodi* was first published in 1613 (fourteen years after סדר היום) Cohen notes ("סדר קבלת שבת," 77) that this version in *Tiqqunei shabbat* was the first *Ashkenazi* printing of Alkabetz's poem (although see p. 84 for an earlier printing). Although Cohen's version of the 1584 Siddur did not have the date on the book itself, the date appears explicitly on the final page of the copy in the Rare Book Room at the Jewish Theological Seminary (RB 109:4). (This same copy contains two pages of handwritten text on the pages following *Lekha dodi*, pp. 110b and 111b. To date, this manuscript has not been analyzed).

27 סידור לכל השנה, 109a-b. Translation: Afterward we say this beautiful and praiseworthy poem, established and constructed by the divine, honorable Sage, our teacher, Rabbi Shlomo Halevi ibn

abetz's poem, Psalm 92, Mourner's Kaddish, and the notation: וּשְׁלֹם קְבִלַת שַׁבָּת.²⁸ There can be no doubt, then, that the publication of Alkabetz's poem preceded the ones published in סדר היום by fifteen years.²⁹

Of course, the publication date of the poems does not settle the dispute about which was written first. Cohen notes that the Italian custom of reciting *Lekha dodi* from a manuscript, rather than from a printed Siddur, reflects an old tradition of writing *Lekha dodi* in manuscript form in order to distinguish it from the formal Friday night service. Indeed, Cohen references a manuscript that dates back as far as 1612 (and perhaps much earlier) which supported this tradition.³⁰ It is certainly possible, then, that the poem which appears in סדר היום also existed in manuscript form for years prior to its publication.

In attempting to date Alkabetz's *Lekha dodi*, Reuven Kimelman notes five references in kabbalistic literature to the poem.³¹ However, in all but one of

Alkabetz ז"ל in the city of Safed, may it be rebuilt and restored speedily in our days, Amen. To the tune of *Shuvi nafshi limnuhaikhi*. (For more on this melody, see Kimelman, לכה דודי וקבלת שבת, 31–32. It is interesting to note that the poem *Shuvi nafshi limnuhaikhi* is printed in the same Siddur in full, p. 110–12a. See Davidson, אוצר, 2:427, no. 3665. See also Berliner, כתבים ונחירות, 1:44).

- 28 It is important to note that following this section, the Siddur opens a new section called שלש תפלות לשבת, ערבית ושחרית ומנחה. In the following pages, the prayer leader is instructed to begin with Psalm 99, Psalm 100, *bameh madiqin*, *qaddish derabbanan*, Psalm 92, Psalm 93 and *hatzi qaddish*. Therefore, although סדר היום remains the first Siddur with the modern selection of *qabbalat shabbat* psalms (95–99, 29) and *Lekha dodi*, this Siddur introduced a service with four Psalms. It is also interesting to see that Psalm 92 appears in the *qabbalat shabbat* service and the *ma'ariv* service, indicating that people perhaps did not perform both services.

- 29 Although Cohen doesn't write about it, he cites a caption to a picture of a manuscript of פלה דודי by R. Menahem Azaria of Fano written in Italy in 1582, which also reproduces the *Lekha dodi* of Alkabetz. This represents the first known manuscript of *Lekha dodi*. The author introduces the poem: פיוט לקבלת שבת and then writes Alkabetz's name followed by ז"ל. The poem looks to be the same as the one preserved in current editions, except for the verse ימין ושמאל which seems to have changed the word תפריץ to something else, not immediately clear (see JTS Reel 18, p. 196a). The dating is clearly marked on p. 240a, written by Abraham bar Meshullam Mazanili. This manuscript is referenced by Halamish, הנהגות, 224. Halamish, הנהגות, 231 n. 796) also references an earlier publication of סדר היום, in 1586.

- The subsequent history of the publication of *Lekha dodi* in *siddurim* is a long and colorful one. Cohen ("סדר קבלת שבת," 82) notes that later Sefardi *siddurim* did not reproduce the poem, and there seemed to be a sort of backlash to the original publication. Indeed, although it appeared in *Tiqqunei shabbat*, *Lekha dodi* did not appear in an Ashkenazi Siddur until 1667 (Cohen, "סדר קבלת שבת," 83, although see n. 46), and did not appear in Italian rites until 1700 (Cohen, "סדר קבלת שבת," 84). As late as 1734, congregations were rebelling against religious leaders who encouraged the singing of *Lekha dodi* (Cohen, "סדר קבלת שבת," 85). Green ("Some Aspects," 106 n. 33) has called for further investigation of the poem's publication. See further Halamish, הנהגות, 227.
- 30 Cohen, "סדר קבלת שבת," 85 n. 54 and 101 n. 133. Maarsen, writing in 1922 ("קבלת שבת," 85), notes that the practice of not reciting *Lekha dodi* from a Siddur still exists.

- 31 Kimelman, לכה דודי וקבלת שבת, 20–21. It is odd that Yosef Karo, a close associate of Alkabetz, never mentions the poem. See *Shulhan 'aruch*, *orah hayyim* 261:4. Idelsohn attempts to date *Lekha dodi* to 1570 or 1571, but bases his conclusion on testimony from *Hemdat yamim*, which post-dated

those references, it is not clear to which *Lekha dodi* poem the kabbalist writer is referring.³² The one clear reference to Alkabetz's *Lekha dodi* comes from a letter sent by R. Shlomo Shlomil, after he emigrated to the land of Israel in 1602.³³ Therefore, the only clear date of a tradition to sing Alkabetz's *Lekha dodi* appears long after the publication of the 1584 Siddur; the other references to *Lekha dodi* may in fact have been referring to those which appear in סדר היום.

Kimelman admits he cannot date Alkabetz's *Lekha dodi* earlier than 1577, yet he attempts to push the date of the composition earlier by examining prior poems with similar themes.³⁴ He notes the similarities between Alkabetz's *Lekha dodi* and Mordechai Dato's poems, likely written between 1560–65, as well as Shimon ibn Lavie's famous poem *Bar Yohai*, written at least as early as 1567. Kimelman points out that Dato was a student of Alkabetz, and therefore his *Lekha dodi* must have preceded the poems from 1560–65. However, it is still quite possible that the *Lekha dodi* poems in סדר היום predated Dato's poems as well. Thus, we cannot draw clear conclusions based on the publication dates of the poems.

Other scholars claim that Alkabetz's version came second. Basing themselves on literary evidence from within the poems, Eisenstein, A. Schechter, Zlotnik, Razhabi, and Kimelman all claim that the poems of סדר היום preceded that of Alkabetz.³⁵ However, much of this determination is colored by the fact that these authors prefer Alkabetz's poem aesthetically to the one(s) in סדר היום. For instance, Kimelman writes: "Machir's version does not approach the wisdom of our poem, neither from the poetic aspect, nor from the aspect of the kabbalistic material in it."³⁶ If Alkabetz's poem is a better composition, they argue, why would anyone rewrite a superior poem (Alkabetz's) and publish an inferior version (סדר היום) instead?³⁷ Kimelman uses this reasoning when he writes: "It is

this event by close to 170 years, as noted by Kimelman (לכה דודי וקבלת שבת, 18). See above, n. 26. Bazak, ("עיונים," 183) claims *Lekha dodi* was written circa 1548, but offers no proof for this claim.

32 As noted above (n. 24), Abraham Galanti refers to a poem called פזמון של שבת, which could refer to any number of poems. Galanti also specifically refers to a poem called בראי כלה, which seems unlikely to be Alkabetz's poem. In addition to those references, Kimelman notes Abraham Halevi's reference to פזמון לכה דודי (S. Schechter, *Studies in Judaism*, 297; see above, n. 22) and a letter dated 1577, referring to פזמון לכה דודי. Of course, this פזמון could certainly be the poem in סדר היום, since it has the same refrain as Alkabetz's version. See Yaakov Moshe Toledano, אוצר גנוזים (Jerusalem: Mossad HaRav Kook, 1960) 50. Toledano assumes that this poem is that of Alkabetz (see p. 50 n. 6); in fact, it easily could be another version, such as the one in סדר היום.

33 Simha Assaf, "אגרות מצפה," *Kobez al yad* 3:13 (1939) 117, 127.

34 Kimelman, לכה דודי וקבלת שבת, 23–25. Even this date could refer to the *Lekha dodi* of סדר היום. See n. 32.

35 Eisenstein, אוצר דינים ומנהגים, 193; A. Schechter, *Lectures in Jewish Liturgy*, 58; Zlotnik, "לכה דודי," 14; Razhabi, "לכה דודי," 163; Kimelman, לכה דודי וקבלת שבת, 25 n. 155.

36 Kimelman, לכה דודי וקבלת שבת, 26 n. 155. Green ("Some Aspects," 105) calls it "not quite as lovely as that of Alkabetz."

37 Zlotnik writes ("לכה דודי נצא השדה," 14): "It is impossible to imagine that someone composed

possible that our version [of Alkabetz] is a reworking of an existing poem, or a sort of final printing . . . since our version points to a change in direction, an improvement of language and style, and a broadening of subject."³⁸ This argument is flawed in that it uses subjective aesthetic judgments as the basis of determining which poem came first.³⁹

Other scholars use additional internal evidence in arguing for the originality of the versions in סדר היום. For instance, Razhabi argues that the first poem in סדר היום was ineffective because it didn't deal directly with Shabbat. Alkabetz was thus motivated to write a revised version which deals "entirely" with Shabbat.⁴⁰ However, it can be argued that the themes of the סדר היום *Lekha dodi* also connect to Shabbat (redemption from Egypt, mentioned in Friday night *qiddush*; *matan torah*, which includes the commandment of keeping Shabbat). Similarly, one could argue that the middle stanzas of Alkabetz's poem connect only tangentially to Shabbat.⁴¹ Finally, Shimon ibn Lavie's poem *Bar Yoḥai*, which has no direct mention of Shabbat, was intended to be sung on Shabbat and remained a very popular Shabbat poem, despite this disconnect.⁴² Therefore, Razhabi's reasoning also seems overly subjective.

Abraham Schechter marshals the most powerful literary evidence to demonstrate that the *Lekha dodi* poem of סדר היום came first. First, Schechter notes

the above *Lekha dodi* [of סדר היום] after the poem of Alkabetz, and that after Alkabetz's poem became famous did Machir choose to give a place in his Siddur to the above version." Green ("Some Aspects," 105) is more cautious: "Did the refrain become standard practice in the Safed community, while different circles each freely composed verses of their own? Or was the Ben Machir version, not quite as lovely as that of Alkabetz, an earlier attempt on which R. Shlomo ha-Levi then built his own poem?"

38 Kimelman, לכה דודי וקבלת שבת, 126 n. 155. The extent to which the version in סדר היום employs broad subjects will be discussed below.

39 An excellent example of the influence of subjectivity on the judgment of these poems is the debate about the influence of biblical phrases on the works. Idelsohn ("ישראל נאמארה ושיירתו," 27 n. 1) dismisses the poem in סדר היום as "merely a collection of biblical verses and platitudes" (צורפי פסוקים ומליצות). However, A. Schechter (*Lectures in Jewish Liturgy*, 57) charts the influence of Isaiah, Jeremiah and others on almost every phrase in Alkabetz's work (see also Kimelman, לכה דודי וקבלת שבת, p. 33). Indeed, while Idelsohn criticizes the version in סדר היום for its copying from the Bible, Herman P. Salomon praises Alkabetz's use of biblical phrases: "The poet ingeniously introduces biblical phraseology (mostly from Isaiah) . . ."; see Salomon, "Leha Dodi: Hispanic Origin and Spanish Translations," *American Sephardi* 5 (1971) 33–42. Cohen ("סדר קבלת שבת," 99) notes this seeming paradox, and exclaims that "at least 90% of the stanzas in Alkabetz's poem are built on biblical sources. . . ." Nonetheless, Cohen judges the weaving of biblical texts in Alkabetz's work to be "an organic symphony in a wondrous form" ("סדר קבלת שבת," 99). Thus it is clear that the popularity of Alkabetz's version impinges on the judgments of scholars in evaluating the works.

40 Razhabi, "לכה דודי," 163–64.

41 See, for instance, Abraham Zvi Idelsohn, *Jewish Liturgy and its Development* (repr.; New York: Schocken Books, 1972) 129. See also Kimelman, לכה דודי וקבלת שבת, 46.

42 See Kimelman, לכה דודי וקבלת שבת, 25. Halamish, הקבלה, chap. 24.

that the *סדר היום* version places the words *זכור ושמור* in the traditional order of the texts in the Talmud.⁴³ The *Zohar*, comparing *זכור* to the male aspect and *שמור* to the female aspect, was also clear about the order.⁴⁴ Alkabetz, sensitive to the kabbalistic undertones of the order of these words, was nevertheless forced to reverse the order of the original poem, in order to begin the acrostic with his name.⁴⁵ Second, Schechter observes that Alkabetz's poem included a ninth stanza beginning with the words *בואי בשלום*. Why would Alkabetz include a stanza which does not match the acrostic? Schechter writes: "The fact that this stanza is included in Alkabetz's 'L'chah Dodi,' even though it is not part of the acrostic forming his name, shows that Alkabetz used the 'L'chah Dodi' known in his time as a basis for his own version."⁴⁶ This provides powerful literary evidence that Alkabetz's poem came later.⁴⁷

One could certainly ask: Why did Alkabetz choose to write a poem of nine stanzas at all? Why not simply write a poem with eight stanzas, matching the number of letters in the author's name? This may be answered by the poetic form in which Alkabetz chose to work. Razhabi claims that Alkabetz modeled himself on the ancient *selihah* form; however, it seems more likely that Alka-

⁴³ See *b. Šebu.* 20b: זכור ושומר בדיבור אחד נאמר. See also *b. Roš Haš.* 27a. The order of the words is clearly demonstrated in *Mekilta de-Rabbi Ishmael, Baḥodesh* 7 (ed. Jacob Lauterbach [3 vols.; Philadelphia: Jewish Publication Society, 1949] 2:252): זכור ושומר – זכור מלפניו ושומר מלאחריו. This order also connects to Psalm 92, in the midrashic understanding. Both were said to be doubled. This would work nicely as the opening of a *petiḥta* to Psalm 92. See Hachohen, “מנהגי ליל,” 34 and *Midrash Tehilim* 92 (ed. Solomon Buber [Vilna: Romm, 1891] 201a). For a broader kabbalistic understanding of the terms, see Green, “Some Aspects,” 98 n. 12.

44 See Zohar 1:48b; *Tiqqunei Zohar* 21b. See also Daniel C. Matt, *The Zohar* (5 vols.; Stanford: Stanford Univ. Press, 2004–10) 1:266 n.1233.

A. Schechter writes (*Lectures in Jewish Liturgy*, 58): "It is probable that Solomon Alkabetz changed אחד שמור וזכור בדיבור אחד to זכור ושומר בדיבור אחד, in order to be able to form an acrostic of his name שלמה." It is important to note, however, that the phrase שמור וזכור did precede Alkabetz. For instance, *Zohar* 3:180b: (וכד אתפרש דא מן דא) דא חתמא דלא אתפרש דא מן דא (וכד אתפרש דא מן דא) דא חתמא דלא אתפרש דא מן דא. In addition, Maimonides' version of the middle blessing for Musaf of Shabbat stated: למשה צוית על הר סיני מצות שבת שמור. See Maimonides, סדר תפילות כל השנה, וזכור ובר צויתנו יי אלהינו להקריב לך קרבן מוסף כראוי ... in משנה תורה (6 vols.; Bnai Brak: Sifrei Kodesh Mishor, 1990) 1:153. But this could be a later interpolation (based on *Lekha dod?*) because Daniel Goldschmidt's printing from manuscripts has the reverse order. See Daniel Goldschmidt, "סדר התפילה של הרמב"ם" (Jerusalem: Magnes, 1996) 206 line 9. See further Kimelman, לכה דודי וקבלת שבת, 39 n. 40. For an explanation of why שמור should precede זכור logically, see Kimelman, לכה דודי וקבלת שבת, 38–39, where he identified שמור with night (therefore preceding זכור, which is day). Although by this logic, ה אחד ושמו אחד should be reversed because the first part is male, and the second is the female. Still, it is certainly possible that Alkabetz's poem came first, and the one in סדר היום "fixed" the reference to match the well-known citations of the Talmud.

46 A. Schechter, *Lectures in Jewish Liturgy*, 59.

47 Although see Kimelman, *לכה דודי וקבלת שבת*, 37-43.

betz was influenced by the *zajal* form of poetry.⁴⁸ This style, introduced by the Cordovan poet Ibn-Guzman (1078–1159?) had a rhyme scheme of AA, bbbA, cccA, dddA, etc. Ibn-Guzman's composition was known to have existed in Safed, and most of his poems had nine verses.⁴⁹ Nonetheless, Alkabetz could have finished his composition with a phrase beginning with the word "חזק", as was customary for other poets to do.⁵⁰ Rather, it seems likely that Alkabetz was influenced by an existing stanza beginning בעלה עטרת בשלום.⁵¹ Indeed, Alkabetz certainly could have reworked the existing poem, cited by Machir, into a different version with his own personal stamp.⁵² Therefore, although a final conclusion may not be reached with certainty, the most plausible theory seems to be that many poems based on the refrain *Lekha dodi* existed in kabbalistic Safed, and Alkabetz based his on a pre-existing version, likely the first poem which appears in סדר היום.

Having analyzed the history of the poems in Machir's סדר היום, we will now

- 48 Razhabi, "לכה דודי," p. 162. See Salomon, "Hispanic Origin," 33–35. While it is tempting to look to meter to judge the relative dating of the poems, the meter of these poems is not very clear. At first glance, Alkabetz's poem seems to have a regular beat of four stresses to a line. But in fact, that calculation only works if one counts secondary stresses inconsistently. Alkabetz's poem seems not to have any strict metrical pattern – quantitative, accentual or syllabic. In fact, the closest one can conclude about the meter is that Alkabetz's poem consists of three or four words to a line, mostly four, while the סדר היום poem has three or four words to a line, mostly three; the principle is the same. I thank Prof. Raymond Scheindlin for clarifying these points.
- 49 Salomon, "Hispanic Origin," 42. It is possible that Alkabetz in fact intended his poem to point towards a tenth "verse," the liturgical formula printed in בואי כללה, בואי כללה, בואי לשלום. שבת מלכתא. The mention of שלום in the final verse of *Lekha dodi* points to the *sefirah* of *yesod* (Kimelman, לכה דודי וקבלת שבת, 16). Perhaps the tenth *sefirah*, *shekhinah*, is calling out: let's unite with *yesod*. In this understanding, Alkabetz's nine stanzas would lead to the tenth *sefirah*, the *shekhinah*. Kimelman (לכה דודי וקבלת שבת, 46) sees the refrain as the tenth "verse."
- 50 See further Israel Ta-Shma, "בסיום הקריאה ובחתימת הפיוט," *Tarbiz* 57 (1988) 115–18.
- 51 In fact, this final stanza has had a unique history in the life of the poem *Lekha dodi*. As Bazak notes, "עיונים בלכה דודי," 187, this is the only verse which addresses the Shabbat directly. In addition, Mordechai Jastrow established the practice in Worms, sometime between 1864–66, that the congregation should only sing the final stanza, בעלה עטרת בשלום. See Isaac Maarsen, "קבלת", *Jeschurun* 9:5/6 (1922) 52. In addition, Shlomo Zalman Geiger (1792–1878), writing about the proper melody for *Lekha dodi* for his community of Frankfurt, noted that the final verse, בואי בשלום עטרת בעלה, should be sung in a different melody from the stanzas preceding it. See Aharon Ahrend, "החלפת הניגון בפיוט לכה דודי," *Sinai* 111 (1992) 94.
- 52 Indeed, the tradition of rewriting parts of *Lekha dodi* continued to evolve long after Alkabetz. The author of *Hemdut yamim* (first printed in 1731), who disliked the references to exile on Shabbat, rewrote the verse beginning מלך עיר מלוכה, מאז היתה ראש ממלכה, to read: מלך מקדש מלך. והיא עתה תתעטר במלכה, והוא יחמול עליך חמלה. In addition, Yosef Yozma Hahn Neurlengin (d. 1637), author of *Yosef omeš*, rewrote the stanza לקראת שבת מלכה to begin לקראת שבת מלכה because his community did not go out to the field to greet the Shabbat (See Maarsen, "קבלת שבת," 84; Razhabi, "לכה דודי," 164 and n. 12). For additional examples, see Razhabi, "לכה דודי," 164, and Halamish, הנהגות, 233–36.

provide an account of their meaning. As we have demonstrated above, the stanzas in סדר היום actually represent two separate poems, one with six verses (followed by a liturgical formula) and a second with just one verse preserved. As such, we will number each of the stanzas according to this scheme.⁵³

1. זכור ושמור בדיבור אחד, נתן לנו המלך המיוחד, ה' אחד ושמו אחד,
לשם ולתפארת ולתפלה, לכה דודי וכו'

1. "Remember" and "Keep" in one word / The unique king gave to us /
God is One and His name is One / For fame, glory and prayer.⁵⁴

This stanza is almost exactly the same as Alkabetz's first verse, except for three differences: 1. the reversal of the order of זכור ושמור, 2. the phrase נתן לנו מלך instead of אל השמינו, and 3. the use of לתפלה instead of לתהלה.⁵⁵ As such, Kimelman explains the derivation of most of this verse in his book, and those explanations need not be rehearsed in detail here.⁵⁶ One note about the use of לתפלה instead of לתהלה: perhaps the author was familiar with the mystical significance of uniting *ge'ulah* (the name of the final benediction after the recitation of the *shema*^c paragraphs) with *tefilah* (the *amidah*) as representing the unification of *yesod* and *malkhut*, identified by Alkabetz.⁵⁷ The use of לתפלה, connecting it to ולתפארת ולשם, may be a purposeful interweaving of these images.⁵⁸

2. קדושת שבת הנחלתנו, ועל הר סיני קרבנותנו, בתורה ומצות עטרתנו, וקראתנו
עם סגולה, לכה דודי

2. The holiness of the Shabbat You bequeathed to us / And on Mt. Sinai You drew us close / With Torah and *mišvot* You crowned us / And called us a treasured nation.

53 We will not investigate at length those stanzas which Kimelman has analyzed. For a complete analysis of the refrain *Lekha dodi*, see Kimelman, לקבלת שבת, chap. 3. I do not claim to provide a full kabbalistic treatment of these verses, and hope this initial analysis opens the way for further examination.

54 The 1599 and 1605 printings of סדר היום both have לתפלה, not לתהלה. None of the reproductions of the poem preserve this original version, perhaps influenced by Alkabetz's poem, as well as Deut 26:19, Jer 13:11 and 33:9.

55 See above p. 8, and previous note.

56 Kimelman, לקבלת שבת, 24, 37, 40, 42–43, 45, 50, 98, 101, 122, 132–33 and 158–59. He essentially argues that שמור (feminine aspect, night, bride, *shekhinah*, *heh*) and זכור (male aspect, day, groom, *vav*) unite to form one, as is reported by the *Zohar* (see *Tiqqunei Zohar* 6:21b). He explains the reordering of the words לתפלה ולתהלה (in our text, לתפלה) with sefirotic significance: לשם is *shekhinah*, תפארת is *tiferet*, and תהלה is *binah*. Therefore, the ordering of the words is significant: from lower realm to higher realm.

57 See Kimelman, לקבלת שבת, 45.

58 See further, n. 56 above. For another example of the confusion between תהילה and תפילה see the Qumran version of Psalm 145.

The phrase *סגולה עם סגולה* references the well-known title of Israel.⁶⁷ The phrase indicates God's unique relationship with Israel vis-à-vis the other nations.⁶⁸ However, as in other places in the poem, this may be a coded reference to the eventual defeat of Israel's enemies. This is referred to directly in *Midrash Tannaim* (Deut 14:2): לעם סגולה אימתי הן סגולים בזמן שהוא מכלה אומות העולם: מפניהם ומשתיירין בעולם שני' (מלא' ג יז) והיו לי נאם ה' צבאות ליום אשר אני עשה סגולה: This defeat of enemies, referenced in the following verses as well, could also carry the kabbalistic nuance of "the defeat of 'kabbalistic' foes," as seen, for instance, in Elbaz.⁶⁹ Thus this final stich is multifaceted in its connotations.

3. נודה לך אלינו, כי ממצרים הוצאתנו, ומבית עבד' פדיתנו, בכח ירך הגדולה, לכה דודי

3. We are thankful to you, our God/ For You brought us out of Egypt/
And redeemed us from the house of bondage/ Through the strength
of Your great hand.

This stanza uses familiar imagery for the redemption of Egypt, which, as noted above, is one of the purposes of Shabbat: "זכר ליציאת מצרים." The first three stichs recall the second blessing of *birkat hamazon* which references God's redemption of Israel from Egypt, and the language of that blessing is very similar to this stanza: נודה לך... שהוצאתנו ה' אלהינו מארץ מצרים ופדיתנו מבית עבדים.⁷⁰ The close reference to that blessing also connotes the themes of the rest of the blessing: God's leading of Israel into the Promised Land. The theme of God's providence in establishing a people in Israel leads to the final stich: בכח ירך הגדולה, for it is by God's hand, not by one's own hand, that the worshiper found himself in Safed.⁷¹

The kabbalistic interpretation of this verse seems to be associated with חסד. For instance, the phrase נודה לך is associated with חסד, according to the *Zohar*.⁷² In addition, the phrase יד גדולה is also connected with חסד, as well as with the *shekhinah*.⁷³ The term גדולה also carries significant kabbalistic meaning. God is

67 See, for instance, Ps 135:4, Deut 7:6, 14:2, 26:18, Exod 19:5.

68 *Midrash Tanhuma* (Warsaw: N. D. Süßberg, 1875), *Ki tisa* 8: "א"ל לפי שהם חביבין עלי מכל האומות: והם סגולתי ובהם חשקתי ובהם בחרתי שנאמר וכן בחר ה' אלהיך להיות לו לעם סגולה (דברים יד)

69 See Green, "Some Aspects," 110.

70 This language is also found in a prayer written to be recited at night following the *shema*^c (*b.Ber.* 14b): חייא בר רב אמר: אמר אני ה' אלהיכם – צריך לומר אמת, לא אמר אני ה' אלהיכם – אינו צריך לומר: אמת. והא בעי לאדכורי יציאת מצרים! – דאמר הכי: מודים אנחנו לך ה' אלהינו שהוצאתנו מארץ מצרים ופדיתנו מבית עבדים ועשית לנו נסים וגבורות על הים ושרנו לך. This text is appropriate since the recitation of the poem was intended for the approach of night.

71 Compare Isa 10:3.

72 *Zohar* 2:168b: דאמר חסד ואלהיך נודה לך על כל ועל כל נסין ואתין: דאמעבידו מסטרא דטוב.

73 *Zohar* 3:283a: בפסח איהי שכינתא י"ד הגדולה מסטרא דחסד, בראש השנה איהי י"ד החזקה מסטרא דגבורה.

מי אל גדול כאלהים. The midrashic understanding of this verse clearly references the other nations, who refused the Torah.⁸⁸ However, the wonder that God did may also refer to the salvation God performed and will perform for Israel.⁸⁹

The second stich of the stanza again refers to Egypt, as Joseph experienced that land before rising to power (another reference to גֵּדוּלָה).⁹⁰ The stanza continues the sweep of history, referencing openly the Promised Land (never directly mentioned in the previous poem).⁹¹ The phrase אֶרֶץ צְבִי seems to refer to Jer 3:19, as understood by *Midrash Tehilim* 5:11: וַתֹּךְ שְׂנֵאמֶר וְאַתָּה לֵד: אֶרֶץ חֲסֻדָּה נִחַלְתָּ צְבִי צְבָאוֹת גּוֹיִם (ירמיה ג יט) וְאַרְצָךְ צְבִי נִחַלְתִּי אוֹתָךְ, שְׁנֵאמֶר וְאַתָּה לֵד.⁹² The last word, מִהוֹלָלָה, also seems to refer to Israel.⁹³ The phrase אֶרֶץ צְבִי may also indicate a reference to the messianic redemption, when the dead arise (*b.Ket.* 111a): מֵתִים שֶׁבְּחוּץ: אֶרֶץ שְׁכִינֵינוּ בָּה – מֵתִים לְאַרְצָהּ אֵינָם חַיִּים, שְׁנֵאמֶר: (יִחְזָקָאל כ"ו) וְנִתְּתִי צְבִי בְּאֶרֶץ חַיִּים, אֶרֶץ שְׁכִינֵנוּ בָּה – מֵתִים לְאַרְצָהּ אֵינָם חַיִּים. This entire stanza, then, moves from the redemption from Egypt, to the entry to Israel, to a view toward the messianic redemption (hinted at in the first stich as well).

in the opening: *הרציא נא מבית כלא אתה האל ערשה פלא*, published in 1822 by Abraham Antibi (1765–1858). Perhaps Antibi was influenced by the poem in סדר היום.

- 88 *Midrash Tanhuma, Vezot haberakhah* 3 (ed. Solomon Buber [2 vols., repr.; New York: Sefer, 1946] 2:27b–28a): ויאמר ה' מטני בא וגו' (דברים לג ב). מלמד שהחזיר הקב"ה את התורה על אומות העולם, ולא קבלוה, עד שבא אצל ישראל וקבלוה, שנאמר וזרח משטיר למו (שם), אלו בני עשו, שהן בני שעיר, הופיע מהר פארן (שם), אלו בני ישמעאל שנאמר וישב במדבר פארן (בראשית כא כא), וכתוב עמד וימודד ארץ ראה ויתר גוים (חבקוק ג ו), שראה שלא רצו לקבל את התורה, הקפיצן לגיהנם, כמו שאמר לנתן (בהם) [בהן] על הארץ (ויקרא יא כא), ובמקום אחר הוא אומר וידוך ה' כל מלכי ארץ כי שמעו אמרי פיך (תהלים קלח ד), ועדיין צריכין אנו לומר שמא רצו לשמוע, בא מיכה המורשתי ופסק הדבר, שנאמר ונשיתי באף ובחמה נקם את הגוים אשר לא שמעו (וגו') (מיכה ה יד), הא למדת שלא רצו לקבל את התורה, בא דוד ונתן הודאה להקב"ה על כך, שנאמר אתה האל עושה פלא הודעת בעמים עוזך (תהלים עז ט), אמר דוד רבש"ע פלאים שעשית בעולמך שהודעת תורתך לאומות העולם, אין עוזך אלא תורה, שנאמר ה' עוז גבורתו (דברים ל טז), Compare *b. Avod. Zar.* 2b. לעמו יתן (שם כט יא).
- 89 See *Midrash Tehilim* 67 (ed. Buber, 157b–58a): אלא להודיע, אלא מושיע לישראל במעשיהן, אלא גבורתו ולהודיע שמו הגדול, וכן אסף אמר נודע ביהודה אליהם בישראל גדול שמו (תהלים עז ב), ואומר אתה האל עושה פלא הודעת בעמים עוזך (שם עז טז), מה העוז שהודעת גבורתך בעולם, לגאלם בעוון ובזרועך, ואומר ויושיעם למען שמו (שם קו ח), למה להודיע גבורתך, שהקב"ה מושיע את ישראל.
- 90 *Yalkut Shim'oni, Shemot* 166 (ed. Heimann, vol. 3, p. 26): מכרו בניו את יוסף וירד מצרימה וינתן בבית (שם קו ח), למה להודיע גבורתך, שהקב"ה מושיע את ישראל הכלא שנים ששים עשרה עד אשר חלם פרעה הקדמוני חלומו ויוציאהו מבית הכלא ויגדלהו על כל שרי מצרים על פתרו חלומותיו לו.
- 91 However, Bazak sees the words *tif'eret* and *'ateret* as a coded signaling of Jerusalem. See Bazak, "עיונים," 189. Machir explicitly used the word *'ateret* to refer to the future restoration of Jerusalem's glory. See Maroz, "חבורת," 57–58.
- 92 See Buber ed. 26a. This is also the understanding of the Talmud (*b. Ket.* 112a): אמר רב חסדא, מאי דכתיב: (ירמיהו ג') ואתן לך ארץ חמדה נחלת צבי? למה ארץ ישראל נמשלה לצבי? לומר לך: מה צבי זה אין עורו מחזיק בשרו, אף ארץ ישראל אינה מחזקת פירותיה. דבר אחר: מה צבי זה קל מכל החיות, ארץ צבי. For the kabbalistic understanding of ארץ צבי, see *Zohar* 2:136a.
- 93 See *Ezek* 26:17.

The first poem in סדר היום is, in fact, more than a simple collection of biblical phrases, as Idelsohn characterized it. It is a work with clear themes: the redemption of the past hinting at the redemption of the future, and veiled references to messiansim.⁹⁴ The poem also has numerous references to kabbalistic understanding, beyond the two stanzas repeated in Alkabetz's *Lekha dodi*. Therefore, the *Lekha dodi* poems of סדר היום, written most likely before Alkabetz's work, shed further light on the mystical, national, and messianic understanding of Shabbat in sixteenth-century Safed.

The larger significance of the סדר היום poems is that they allow us to rethink the process of poetic creation in the heyday of Safed kabbalistic writing, and indeed the recitation of such liturgical writings. While modern views of liturgical and poetic composition may privilege the breaking of new ground and the testing of new phrases, the poetic process of Alkabetz seemed to draw direct inspiration from pre-existing poems and phrases. One imagines a fertile poetic ground in which authors spun out a kabbalistic creation stemming from a common theme based on a single line (לכה דודי לקראת כלה, פני שבת נקבלה). Those poems coexisted and shared themes, emphasizing various elements of kabbalistic understandings of God, the Jewish people and Shabbat. While Alkabetz's poem ultimately became standard, one imagines a particular kabbalist choosing from a selection of poems on any given Friday evening, perhaps based on the themes he wanted to emphasize, or the allusions that spoke strongly at that moment. This is recognized by the instructions in סדר היום: ואח"כ נאמר פזמון א' או ב': סדר היום. The existence of various *Lekha dodi* poems not only complicates our understanding of Alkabetz's creative process, but also offers a different view of what it meant to select and recite kabbalistic poetry in sixteenth-century Safed.

Thanks to my teachers Profs. Yosef Tobi, Menahem Schmelzer and Raymond Scheindlin, for reviewing this work.

94 In fact, the ordering of the stanzas, with Mt. Sinai coming before the redemption from Egypt, may hint directly at the idea that these redemption images are meant for a messianic age as well as a reminder of the redemption from Egypt. For the importance of messianism in the thought of Machir's circle, see Maroz, "חבורת," 50.

The Road Not Taken

Rabbi Shlomoh Zvi Schück

and the Legacy of Hungarian Orthodoxy

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The triumph of the Orthodox separatist forces at the Hungarian Jewish Congress of 1868–69 facilitated the swift integration of the ultra-Orthodox viewpoint into the mainstream and the simultaneous decline of the moderate Orthodox camp in numbers and influence. Nevertheless, the latter's members did not completely disappear. Some declared themselves "Status Quo," remaining committed to the pre-Congress reality and refusing to associate with either the newly founded official Orthodox framework or the Neolog-dominated Hungarian Jewish Congress. Yet there were also individuals who maintained affiliation with Orthodoxy, but continued to express opinions that went against the dominant tide.

One such figure was Rabbi Shlomoh (Salamon) Zvi Schück (1844–1916). This article draws attention to the unique contours of R. Schück's approach to the divisions among Hungarian Jewry and its evolution during his lifetime. In the process it demonstrates how his outlook was actually shaped by the more adversarial voices that held sway. Moreover, it suggests what may be discerned regarding the main direction of Hungarian Orthodoxy by highlighting this road not taken. It considers as well the implications of this model for analyzing broader themes in the history of Jewish Orthodoxy.

From the 1860s, Hungarian Jewry was deeply divided along ideological lines.¹ The Neolog movement that supported cultural integration along with educational and mild ritual reform was the religious base for most liberal-minded Jews.² Opposing this group was a vocal and non-compromising Orthodoxy that steadfastly resisted working with or lending any modicum of legitimacy

1 The process that led to the divide has been described with great erudition in Michael K. Silber, "שורשי הפילוג ביהדות הונגריה" (Ph.D. diss.; Jerusalem: Hebrew Univ., 1985). Also see Michael K. Silber, "The Historical Experience of German Jewry and its Impact on Haskalah and Reforms in Hungary," in Jacob Katz, ed., *Toward Modernity* (New Brunswick, N.J.: Transaction Press, 1987) 107–57. On the general condition of Hungarian Jewry during the period under discussion, see Robert Kann, "Hungarian Jewry During Austria-Hungary's Constitutional Period (1867–1918)," *Jewish Social Studies* 7 (1945) 357–88; William O. McCagg, *A History of Habsburg Jews 1670–1918* (Bloomington, Ind.: Indiana Univ. Press, 1989) 123–39, 187–95.

2 On the Neolog movement, see Leopold Löw, *Zur neuen Geschichte der Juden in Ungarn* (Budapest: L. Aigner, 1874); Michael A. Meyer, *Response to Modernity* (Oxford and New York: Oxford Univ. Press, 1988) 157–63, 193–96; Moshe Pelli, "The Ideological and Legal Struggle of Rabbi

to the outlook or lifestyle of their acculturated counterparts. This split became official political reality when a government-sponsored "Jewish Congress" that took place in 1868–69 was abandoned by the Orthodox. Ultimately, two completely separate Jewish communal organizations were recognized by the Hungarian government, one raised the flag of the Neolog, while the other was under Orthodox auspices. Every individual local community had to decide to which organization it would be allegiant.³

The most militant among the traditionalists have become known within scholarship as the ultra-Orthodox. This group articulated an ideology that was predicated on the demonization of all aspects of acculturation. Moreover, they listed among the enemies of the Torah, not only those who to their minds reinterpreted or abandoned it, but even those among the loyal Orthodox who sought to minimize the conflict with outside society and non-Orthodox Jews.⁴

Until the Congress a significant Hungarian Orthodox faction had also existed that voiced positive attitudes toward aspects of modern European civilization. Yet unlike the outlook espoused by Rabbi Samson Raphael Hirsch of Frankfurt am Main in Germany, the Hungarian Orthodox moderates did not necessarily team their openness to the contemporary world with a parallel campaign to hermetically seal themselves off from non-Orthodox Jews and Jewish frameworks.⁵ By seeking political compromises that would allow Hungarian

Aaron Chorin for Religious Reform in Hungary," *HUCA* 39 (1968) 63–79 (Heb.); David Philipson, *The Reform Movement in Judaism* (New York: Macmillan Company, 1931) 270–83.

- 3 On the Hungarian Jewish Congress and its repercussions, see: Adam S. Ferziger, "The Hungarian Jewish Congress," in Gershon Hundert, ed., *YIVO Encyclopedia of the Jews in Eastern Europe* (New Haven: Yale Univ. Press, 2008) 826–28; Jacob Katz, *A House Divided: Orthodoxy and Schism in Nineteenth Century Central Europe* (Hanover and London: Brandeis and Univ. Press of New England, 1998) 89–215; Jacob Katz, "Religion as a Uniting and Dividing Force in Jewish History," in Jacob Katz, ed., *The Role of Religion in Modern Jewish History* (Cambridge, Mass.: Harvard Univ. Press, 1975) 29–32; Jacob Katz, "The Uniqueness of Hungarian Jewry," *Forum* 27 (1977) 45–53; Nathaniel Katzburg, "The Hungarian Jewish Congress of 1868–1869," in Randolph Braham, ed., *Hungarian Jewish Studies II* (New York: World Federation of Hungarian Jews, 1969) 1–34.
- 4 On Hungarian ultra-Orthodoxy see Michael K. Silber, "The Emergence of Ultra-Orthodoxy: The Invention of a Tradition," in Jack Wertheimer, ed., *The Uses of Tradition* (New York and Jerusalem: Jewish Theological Seminary of America, 1992) 23–84. Also see: Adam S. Ferziger, "Religious Zealotry and Religious Law: Reexamining Conflict and Coexistence," *JR* 84 (January, 2004) 48–77; Katz, *A House Divided*, 56–85; Alan Nadler, "The War on Modernity of R. Hayyim Elazar Schapira of Munkacz," *Modern Judaism* 14, 3 (1994) 233–64.
- 5 On R. Hirsch's efforts to create a separate "Austrittsgemeinde" in Germany, see, for example: Saemy Japhet, "The Secession from the Frankfurt Jewish Community under Samson Raphael Hirsch," *Historia Judaica* X (1948) 99–122; Jacob Katz, "הרב שמשון רפאל הירש: המימין ומשמאל" in Mordechai Breuer, ed., *תורה עם דרך ארץ* (Ramat-Gan: Bar-Ilan Univ. Press, 1987) 13–32; Robert Liberles, *Religious Conflict in a Social Context* (Westport, Conn.: Greenwood Press, 1985) 200–226; Judith Bleich, "The Frankfurt Secession Controversy," *Jewish Action* 52 (1991) 22–27 and 51–52. On

communal unity to be sustained, they actually adopted an approach which was similar to that of some of Hirsch's more traditional German Orthodox rivals.⁶

The triumph of the Orthodox separatist forces at the Hungarian Jewish Congress of 1868–69 facilitated the swift integration of the ultra-Orthodox viewpoint into the mainstream and the simultaneous decline of the moderate Orthodox camp in numbers and influence. Nevertheless, the latter's members did not completely disappear. Some declared themselves "Status Quo." By refusing to associate with either the newly founded official Orthodox framework or the Neolog-dominated national governing body, they remained committed to the pre-Congress reality. That said, there were also individuals who maintained affiliation with Orthodoxy, but promoted opinions that went against the dominant tide.

One such figure was Rabbi Shlomoh (Salamon) Zvi Schück (1844–1916). In the following, I will describe the positions he developed on the divisions within Hungarian Jewry. In order to highlight his departure from the dominant Orthodox approach from 1870 onwards, I will contrast his opinions with those of his mentor Rabbi Moses Schick (Maharam Schick, 1807–79). The main sources for my discussion are the responsa collections of the two rabbis. In addition to legal decisions, numerous personal correspondences, homilies, and pronouncements regarding the issues of the day were included in these volumes.⁷

My central aims are: to draw attention to the unique contours of R. Schück's approach to the split among Hungarian Jewry and its evolution during his lifetime, to demonstrate how it was actually shaped by the more adversarial voices that held sway, to suggest what may be discerned regarding the direction of Hungarian Orthodoxy by highlighting this road not taken, and to consider as well the implications of this model for analyzing broader themes in the history of Jewish Orthodoxy.

R. Hirsch's attitude toward nonobservant Jews, see Adam S. Ferziger, *Exclusion and Hierarchy: Orthodoxy, Non-Observance and the Emergence of Modern Jewish Identity* (Philadelphia: Univ. of Pennsylvania Press, 2005) 113–33.

6 On this faction within Hungarian Orthodoxy, see: David H. Ellenson, *Rabbi Esriel Hildesheimer and the Creation of a Modern Jewish Orthodoxy* (Tuscaloosa, Ala.: Univ. of Alabama Press, 1990) 36–58; Katz, *A House Divided*, 110–12, 117–19, 125–30, 138–41, 159–65; Silber, "The Historical Experience," 107–14; Silber, "The Emergence of Ultra-Orthodoxy," 31–37.

7 On the use and abuse of responsa literature as a source for Jewish history, see for example: Jacob Katz, "על הלכה ודרוש כמקור היסטורי," *Tarbiz* 30 (1961) 62–68; Moshe J. Rossman, "Review of Shulman's *Authority and Community*," *JQR* 78, 4 (1988) 332–35; Haym Soloveichik, *שאלות ותשובות, כחוקר היסטורי* (Jerusalem: Merkaz Shazar, 1990); Haym Soloveichik, "Can Halakhic Texts Talk History?" *AJSR* 3 (1978) 153–197; Bernard D. Weinryb, "Responsa as a Source for History (Methodological Problems)," in Hirsch Jakob Zimmels, Joseph Rabinowitz and Israel Feinstein, eds., *Essays Presented to Chief Rabbi Israel Brodie* (London: Soncino Press, 1967) 399–417.

BIOGRAPHICAL AND HISTORICAL BACKGROUND

Born on the eve of the 1848 "spring of nations," Rashban (רשב"ן, Rabbi Shlomoh ben Natan, the Hebrew acronym that he chose for the title of his books) descended from a distinguished rabbinical family.⁸ He received his education in Jewish law in Szécseny (Nograad county, 100 kilometers north of Budapest) under the tutelage of his uncle Rabbi David Schück,⁹ and at the prominent *yeshivah* of his cousin Maharam Schick in Huszt (Máramaros region). The latter was recognized as one of the outstanding students of Hatam Sofer (1762–1839), the most authoritative rabbinical figure in Hungary during the early nineteenth century.¹⁰

- 8 See Shlomoh Zvi Schück, מנחם עד משה (Munkacs: Kahn and Fried, 1903) 25a, where Schück explained that his uncle, R. David Schück, began using a German spelling for their name when he became the rabbi of a German-speaking community, and his brothers adopted it as well. Maharam Schick's side of the family maintained the original Latin spelling. For biographical information on R. Shlomoh Zvi Schück, see: Yitshak Yosef Cohen, חכמי טראנסילווניה (Jerusalem: Makhon Yerushalayim, 1989) 213–14; Yitshak Yosef Cohen, חכמי הונגריה (Jerusalem: Makhon Yerushalayim, 1997) 155–58, 441–43; Adam S. Ferziger, "The Hungarian Orthodox Rabbinate and Zionism: The Case of R. Salomon Zvi Schück," *Proceedings of the Twelfth World Congress of Jewish Studies* 11, 110C (Jerusalem: World Union for Jewish Studies, 1993) 273–80; Yekuti'el Yehudah Greenwald, לתולדות הרפורמציון בגרמניה ובהונגריה (New York: L. Greenwald, 1948) 16 (see n. 36 where he lists R. Schück among "... the outstanding students [of Maharam Schick] who gained wide fame, achieved great accomplishments, and appear in his writings," and p. 102 [n. 67]); Moshe Hershko, תולדות הקהילות קרצאג (Jerusalem: Va'adat ha-Hakhanah shel Yots'e'i Karcag, 1977) 11–38; Meir Herscovits, מהר"ץ חיות (Jerusalem: Mossad ha-Rav Kook, 1972) 74 (n. 15); Pinhas Zelig Schwartz, שם הגדולים הגר' ד' (Paks: Meir Segel Rosenboim, 1913) 45a no. 157; Katz, *A House Divided*, 228; Shmuel Ha-Cohen Weingarten, "השיירה הגדולה בשנת תרס"ה," in Moshe Eliyahu Gonda, et al., eds., יהודי הונגריה (Tel Aviv: Ha-Agudah le-Heker Yehudei Hungariyah, 1980) 175–214; Zvi Zehavi, מחתם סופר עד הרצל (Jerusalem: Ha-Sifriyah ha-Tsionit, 1965) 305.
- 9 On R. David Schück, see Schück, מנחם עד משה, 24b; Schwartz, שם הגדולים ד', 26a no. 44; Theodor Lavy et al., eds., פנקס הקהילות – הונגריה (Jerusalem: Yad Vashem, 1976) 310. His fame in Orthodox circles grew after he became the rabbi of Tokaj. See his letters defending the Orthodox position in the Sziget controversy of 1888, which were printed anonymously in, מכתב גלוי עם מלחמת מצוה (Sziget: M. Sziget, 1888) 8b–9a, 108a–b.
- 10 On Maharam Schick, see: Cohen, חכמי הונגריה, 26–31, 36–39, 50–56, 63–67, 82–85, 91–94, 136–38, 148–57, 351–54; Yekuti'el Yehudah Greenwald, לפלגות ישראל באונגריה (Deva: Markowitz and Friedman, 1929) 60–80; Greenwald, לתולדות הרפורמציון; Meir Hildesheimer, "שאלות ותשובות מהר"ם," רבני הונגריה ואסיפת" (1990) 87–95; Meir Hildesheimer, "שיק: הספר, קינוס, ועריכתו," *Kiryat Sefer* 63, 3 (1990–91) 941–51; Louis Jacobs, *Theology in Responsa* (London and Boston: Routledge and Keagan Paul, 1975) 225–36; Katz, *A House Divided*, 81–84, 131–33, 177–80, 192–97, 210–14, 225–28, 268–77; Jacob Katz, האורתודוקסיה בהתהוותה (Jerusalem: Magnes, 1992) 15, 172–75; Jacob Katz, גוי של שבת (Jerusalem: Merkaz Shazar, 1984) 154–60; Shnayer Z. Leiman, "R. Moses Schick: The Hatam Sofer's Attitude Toward Mendelsohn's *Biur*," *Tradition* 24, 3 (1989) 83–86; Shimon Reinhartz, "רב משה שיק," in אנציקלופדיה של גלויות של (Jerusalem and Tel Aviv: Encyclopedia Shel Galuyot, 1959) 409–17; Schück, מנחם עד משה; Alex Schick, "Moses Schick," in Leo Jung, ed., *Men of the Spirit* (New York: Hymson, 1964) 301–26; Yehudah Schwartz, מורשת רבני הונגריה (Hadera: Yad le-Kehillot Transylvaniyah, 1987) 260–61.

Over the course of his forty years in the rabbinate, Rashban produced a rich corpus of writing which spanned the gamut of traditional scholarly genres and themes: legal responsa, codes, homiletics, liturgy, custom, and hagiography.¹¹

As a young rabbi, Rashban attended the Jewish Congress of 1868–69 which the newly empowered liberal Hungarian government had sponsored, but not as a formal delegate.¹² With the approbation of leading rabbis, a large number of Orthodox deputies eventually abandoned the Congress. Their main claim was the refusal to participate in a collective body with a Neolog majority that could adopt resolutions contravening Jewish law and undermining rabbinical authority. The battle for Orthodox independence was spearheaded, as Jacob Katz has asserted, by Maharam Schick, who presented communal separation as a hallowed value, and subsequently set down rules aimed at ensuring the allegiance of the Orthodox membership.¹³

After the Congress, some of the moderate Orthodox chose to leave Hungary. Most prominently, the leading figure in this faction, Rabbi Esriel Hildesheimer, accepted a standing offer to become rabbi of the Orthodox community in Berlin and head its new rabbinical seminary.¹⁴ Others remained, and many served the Status Quo communities. Initially these frameworks did not constitute an independent stream. The title was applied, rather, to local Jewish collectives that sought to maintain traditional standards of observance without formally separating from the majority of Hungarian Jewry. There were even a number of hasidic-dominated locales that were identified as Status Quo, having chosen

11 His two-volume responsa collection includes: Shlomoh Zvi Schück, "על ספר שאלות ותשובות רשב"ן על, (Munkacs: Kahn and Klein, 1900) (henceforth, Schück, אורח חיים); Shlomoh Zvi Schück, (אורח חיים, (Sztatmár: A. Barbash, 1905) (henceforth, Schück, אבן העזר). For a code of Jewish law in *Jüdische-Deutsche* dialect see Shlomoh Zvi Schück, שלחן ערוך (Budapest: Schlesinger, 1896). For biblical exegesis see Shlomoh Zvi Schück, תורה שלמה (Sztatmár: Z. Schwartz, 1909). Schück's two works on liturgy are: Shlomoh Zvi Schück, תקנות ותפילות (Munkacs: Pinhas Bleier, 1890); Shlomoh Zvi Schück, סידור רשב"ן (Vienna: J. Schlesinger, 1894). On Jewish custom see Shlomoh Zvi Schück, סידור מנהגים (Munkacs: Pinhas Bleier, 1900). For the biography of his mentor, Rabbi Moses Schick (Maharam Schick) see Schück, מחשה עד משה. Rabbi Schück also published a German pamphlet in 1882 that responded to the Tiszaeszlár blood libel and is entitled, *Christen über Juden*. According to Lavy, פנקס הקהילות – הונגריה, 480, this widely read pamphlet made a deep impression on the non-Jewish population. On the Tiszaeszlár blood libel, see Rashban's sermon for the Sabbath prior to the Day of Atonement in 1883 which is reprinted in Schück, אורח חיים #245 [195b–97b].

12 In 21a–22b, Schück (Rashban) confirmed his attendance at the Congress: "I too, as a young man, was privileged to sit at the great assembly."

13 Katz, *A House Divided*, 162.

14 On R. Hildesheimer's activities in Hungary, see Mordechai Eliav, "מקומו של הרב עזריאל הילדסהיימר," *Zion* 27 (1962) 59–86; Mordechai Eliav, "תורה עם," *Sinai* 51 (1962) 127–42; Ellenson, *Rabbi Esriel Hildesheimer*, 36–58; David H. Ellenson, "Rabbi Esriel Hildesheimer and the Quest for Religious Authority," *Modern Judaism* 1 (1981) 279–97.

to maintain independence from the Budapest-based non-hasidic Orthodox national organization. From the early twentieth century, however, an official Status Quo movement was formed that maintained its own schools and synagogues. For the most part, its members and rabbinate were more acculturated than their average Orthodox counterparts, but also demonstrated greater commitment to religious observance than the Neolog community members. Yet in the eyes of Orthodox policy makers – who promoted communal separation not simply as a matter of political exigency but as a central religious ideal – those identified with the Status Quo were nominally no better than the Neolog.¹⁵

Soon after the split was endorsed, Rashban embarked on his career as rabbi of the town of Karcag, in central Hungary (west of Debrecen).¹⁶ A loyal student of Maharam Schick, he did not consider presiding over a Status Quo community. Rather, he stipulated from the outset that the Jews of Karcag and the surrounding villages identify with the Orthodox organization. This condition was accepted, but soon he himself began to question the attitudes of the Orthodox and the leaders who espoused them.¹⁷

THE CONGRESS

For the Orthodox, the Jewish Congress of 1868–69 marked the turning point in their official policy vis-à-vis the non-Orthodox. Previously some leaders still clung to the hope that their uncompromising stand would eventually de-

15 Some of the larger cities maintained Orthodox, Neolog and Status Quo synagogues. On the Status Quo, see: Cohen, חכמי טראנסילווניה, 210–19; Cohen, חכמי הונגריה, 146–58; Greenwald, לתולדות, הרפורמציות, 87–112; Katz, *A House Divided*, 204–14; Howard Lupovitch, “Between Orthodox Judaism and Neology: The Origins of the Status Quo Movement,” *Jewish Social Studies* 9, 2 (Winter 2003) 123–53; Shmuel Hachohen Weingarten, “השלילה שבשיטת הפירוד בהונגריה,” *Areshet* (1944) 431–38.

16 On the history of Karcag Jewry, see Hershko, קרצאג, ותולדות קהילות קרצאג; and Lavy, פנקס הקהילות – הונגריה, 480. It is noteworthy that Rashban's predecessor was Rabbi Markus (Mordechai Amram) Hirsch, who went on to become rabbi of Prague, before later being appointed the chief rabbi of Hamburg. While still in Hungary, he took part in the Congress and was counted among the moderates who supported the Orthodox faction led by R. Hildesheimer. Subsequently he affiliated with the Status Quo. In Germany he was squarely within the Orthodox camp. See Katz, *A House Divided*, 64, 117, 118, 129, and esp. 176.

17 See Schück, אורח חיים, #101 [77a]: “On the fifteenth of Shevat, 5669, I came to sit with my family on the seat of the rabbinate, and when they heard that I was a ‘Keeper of the Faith’ (שומר הדת) they turned away.” שומר הדת was the name of the political arm organized by the Orthodox to counterbalance the publicity activities of the Neolog prior to the Congress. It continued to play a significant role in Orthodox politics after the separation was finalized. Also, see Schück, אורח חיים, #6 [9a-b], where he describes the negotiations which were held with one of the village communities under the jurisdiction of the Karcag rabbinate in order to convince its members to accept affiliation with the Orthodox organization.

feat the challenge of the Neolog for the allegiance of the majority of Hungarian Jewry. Henceforth, official Orthodox efforts were focused exclusively on building fortresses for themselves in order to defend and preserve that which still remained of what they considered authentic Judaism.

Maharam Schick was a driving force in these efforts until his death in 1879, and articulated the policy of communal separation in writing. In a report that was published two years after the event, he aimed to convince his readership of the justice of the Orthodox behavior at the Congress. R. Schick hoped that the rendering of his version of the events would encourage participation in the newly formed Orthodox national organization.¹⁸

According to Maharam Schick, the Orthodox were coerced by government pressure into attendance (אנוס על פי הדיבור). Despite spending two and half months at the Congress, the Orthodox, he argued, never considered working out a compromise. This would have implied a tacit recognition of the Neolog as a viable stream of Judaism. Rather, the sole aim of the Orthodox was to promote and defend the interests of the true believers.

Ultimately, “we saw that there was no hope from them . . . for what do we and they share when they have abandoned the ways of life of the *Shulḥan ʿarukh* – which every Israelite is commanded to fulfill? They have separated themselves from the ways of Israel and have become a sect unto themselves.”¹⁹

By obstinately refusing to accept the *halakhah* as the guideline for their decisions, it was the Neolog, according to Maharam Schick, who divorced themselves from the Jewish people and caused the Congress to fail. The mandate for the Orthodox, then, was to do battle with the Neolog and the evil resolutions which they eventually passed at the Congress.²⁰

The Congress is mentioned frequently throughout the responsa of R. Shlomo Zvi Schück, who referred to the Neolog as אנשי הקונגרס (the people of the Congress) – because they affiliated with this organization and accepted its statutes. It becomes apparent that there was an evolution in Rashban’s thinking in the course of the thirty years from the time he first expressed his views on the subject until the publication of his works. He was quite aware of this himself.

18 Moses Schick, אורח חיים – שיק – שאולות ותשובות מהר”ם שיק (Munkacs, 1880) #309 [103a] (henceforth, Maharam Schick, אורח חיים). See the comments of Jacob Katz regarding this responsum in “Sources of Orthodox Trends,” in Jacob Katz, ed., *The Role of Religion in Modern Jewish History* (Cambridge, Mass.: Association of Jewish Studies, 1975) 33. Also, see the summary of this responsum in Jacobs, *Theology in the Responsa*, 232–34.

19 Maharam Schick, אורח חיים, #309.

20 Maharam Schick, אורח חיים, #309. See Katz, “Sources of Orthodox Trends,” 33: “By focusing the conflict on a fundamentally religious issue, the Orthodox wished to demonstrate that the two parties at the Congress constituted two different denominations, which could not be expected to cooperate.”

In fact, a number of responsa include citations from one of his speeches from the 1870's followed by an expression of his position close to the time of publication in the early twentieth century.

Rashban's first public statements on the Congress were impassioned speeches made to the Jews of Karcag and its surrounding villages urging them to join the new Orthodox organization. Here he followed the lead of his mentor. In three distinct entries dated between 1871 and 1875 he posited his reasons for supporting the decision to leave the Congress and found a separate Orthodox organization. In an appeal to his congregants in 1871 he stated: "Do see, my friends, that the separation is for the good of the people of the Congress . . . and only through separation will they come to recognize their mistake, thus not being lost forever from the Jewish community."²¹ Here Rashban supported the policy of Maharam Schick, but added a twist which alluded to his eventual digression from the ideology of his teacher. He suggested that it was concern for their brethren and not a quest for insularity that drove the Orthodox to leave. Rashban felt that only if the Orthodox guarded the authentic version of Judaism would the Neolog have the opportunity to recognize its truth and return to the fold.

In 1873, Rashban reiterated his inability to comprehend the callousness of the Neolog in not appreciating the great qualities of the *Shulḥan ʿarukh*, but rather than focusing on the negative results that this would have for them, he turned to the danger that this entailed for Orthodoxy. The requirement for all "believers" to join the Orthodox organization was "... so that those Neolog, who are like drunkards who cannot recognize in which direction things are going, do not rule over us."²² Here there was complete identification with the words of his teacher – even to the extent of a pejorative jibe. It is clear that at this stage in Rashban's life, fear of the damage that the leaders of the Congress would have wreaked on Orthodoxy was his chief concern. Along similar lines, Rashban gave his most open pledge of support for the policy of separation in 1875 when he responded to a correspondent who questioned the justification for leaving the Congress. In the course of pointing out the differences between the situations in Germany and in Hungary,²³ Rashban suggested that the reformers in his country, despite not having made the kinds of radical changes that were instituted in Germany, were no less pernicious in their intentions: "Not because of their love of our Torah, but because they know that till this day the majority of Israel in our state still fear God and will sacrifice their bodies and might in order to destroy their [the Neolog's] words."²⁴

While there is a slight glimpse of more magnanimous concerns, there is no

21 Schück, אבן העזר, #195 [160b].

22 Schück, אורח חיים, #7 [10a].

23 For a critical consideration of the distinctions between Jewish religious life in Germany and Hungary, see Silber, "The Historical Experience."

24 Schück, אבן העזר, #189 [155b].

question that Rabbi Schück began his career located squarely in the worldview of his master, Maharam Schick. However, the environment which developed after his mentor's death in 1879 caused him to reconsider the efficacy of the policies which he had previously fought so hard to enforce. In 1887, this was manifest in the apologetic tone of his defense of the actions of Maharam Schick at the time of the Congress. To those who ventured to suggest that his teacher did not use proper judgment in leaving the Congress he retorted:

This I said in my youth and this in my opinion is clear in the ways of my Teacher and Rabbi, Moses the man of God. I saw all his actions. . . . He only, and no others, walked in the ways of Rabbi Moses ben Maimon. He was very far from the two extremes. . . . However, at the time of the Congress, when they [the Neolog] with their laws audaciously displayed their impudence to the Torah and the honor of the God-fearing rabbis, then only he [Maharam Schick] stood on the watchtower and was like a bridge between the Ashkenazim and Sefardim. For this reason, he was forced to achieve justice, strengthen the religion, incline toward the strict interpreters, and thus save the honor of the rabbis.²⁵

Whereas previously Rashban portrayed the Orthodox response to the Congress as the natural, axiomatic decision, here he went to great lengths to explain that political exigencies forced Maharam Schick to support a position which went against his general approach. R. Moses Schick was described here as the successor to Maimonides in walking along the golden path. His actions at the Congress were still considered commendable, but no longer because they were representative of his true ideals. Rashban hinted to the reader that if not for the necessity of pacifying the hasidic elements in Hungarian Orthodoxy (הספרדים) — the real extremists — his teacher would have taken a more moderate position.

It is true that Maharam Schick was not always in complete agreement with the hasidic groups and other ultra-Orthodox factions as to the measures that should be taken against those who did not accept the Orthodox way.²⁶ But in regard to the Congress, his own words and the earlier descriptions made by Rashban demonstrate that he was quite comfortable with the policy of separation which had officially been set into practice via his leadership. Rather than his mentor, it was R. Schück himself who labored to reconcile his own distress at the situation produced by the Congress with his absolute allegiance to his revered teacher. Moreover, by portraying Maharam Schick in such a manner, Rashban hoped to show that he, not the current Orthodox leadership, had remained consistent with his master's views.

The culmination in the evolution of Rashban's views of the Congress is

²⁵ Schück, אורח חיים, #41 [33a].

²⁶ See, for example, Katz, *A House Divided*, 226–28.

documented in a 1905 discussion. There he related to the powerful statement which he had made in 1875 in support of the new Orthodox organization. No change was conceded in his open support of Maharam Schick and his actions. In fact, he cited new signs of religious delinquency on the part of the Neolog, such as rabbis who perform weddings between Jews and gentiles, as proof of the correctness of separating from them. However, he went on to criticize those who inherited the reins of the Orthodox leadership for sanctifying the name "Orthodox," and promoting a policy which fortified barriers and attacked those who sought to "try to bring closer those who have strayed, to teach them Torah and *mišvot* [commandments]." ²⁷ It was certainly much easier for him to blame his contemporaries for the hatred which continued to grow over time. Yet in essence, what Rashban spelled out here was a clear-cut abandonment of the approach which Maharam Schick had formulated, and which he himself had openly supported earlier in his career.

Rashban's continued support for the existence of a separate Orthodox organization is consistent with his belief that there was a need to define which trend in Judaism had remained loyal to the Torah and its laws. ²⁸ But for him the ultimate purpose was not to remain apart. Rather, it was to serve as a vehicle for showing the Neolog the way back to the proper path. One can argue, though, that by 1905 Rashban no longer held any regard for the Orthodox separation from the Neolog (this, as will become clear, was certainly his feeling in regard to the Orthodox separation from the Status Quo). If so, his persistence in justifying its initial establishment may be seen as the case of a *boḥur* (*yeshivah* student) unable to express in words the reality of his disagreement with the most deeply-held opinions of his *rebbe* (*yeshivah* teacher).

THE NEOLOG

Maharam Schick referred consistently to the Neolog and similar groups in other countries purely in negative terms, always emphasizing the differences between the *miṭḥadshim* (reformers, innovators) and those loyal to the Torah. His basic assumption was that "... the Neolog are like a nation unto itself [כְּעַם בְּפִנִּי עַצְמָן], with no part or place in the children of Israel. . . ." Indeed, he often resorted to

27 Schück, אברן העודד, #189 [156a].

28 Similarly, despite his sharp disagreement with R. Hirsch regarding cooperation with non-Orthodox Jews on matters of mutual concern, R. Esriel Hildesheimer supported organizing the Orthodox community in Berlin as a separate entity. This fact did not stop him from sitting on the board of Bnai Brith and giving his support to other Jewish welfare organizations. For a discussion of Hildesheimer's attitude toward communal separation, see Ellenson, *Rabbi Esriel Hildesheimer*, 85–113; Ferziger, *Exclusion and Hierarchy*, 150–57. There is a tradition among German-Orthodox Jews that in R. Hirsch's Frankfurt a.M. they declared proudly: "Blessed are we for having been granted the right to succeed with separation," while in R. Hildesheimer's Berlin they lamented:

historical models of schismatic groups such as the Karaites and the Sadducees to describe his contemporaries.²⁹

The most blatant example of this attitude is seen in Maharam Schick's involvement in an internal battle between Rabbi Samson Raphael Hirsch of Frankfurt am Main and Rabbi Seligmann Bär Bamberger of Würzburg, a highly respected halakhic authority in his own right, regarding the relationship of German Orthodox Jewry toward Reform. After R. Hirsch succeeded in receiving government approval for his Orthodox followers to secede from the historic Frankfurt Jewish community (*Gemeinde*), R. Bamberger took the position that there was no obligation to separate if the general community would guarantee to provide for the needs of the Orthodox.³⁰ In a letter to R. Bamberger written in 1877, Maharam Schick berated him for permitting the association of God-fearing Jews with those who were like "Korah and his band."³¹ He then proceeded to describe what he perceived as the proper relationship between the Orthodox and the Reform. The approach should be no different from that vis-à-vis the other nations, for the verses in the Bible that expressed God's desire to separate the Jews from all the other nations applied equally in regard to "public Sabbath desecrators and those who seek to disprove the commandments as written in God's Torah."³² Indeed, their gifts and contributions were not to be accepted under the guise that "maybe through this they will return and repent," because heretics (אפיקורסים) such as these posed too great a danger to take any chances. Finally, regarding one of the most basic signs of Jewish identity – burial – he forbade sharing a common cemetery.³³

"Woe unto us for having reached the point of secession." See Yeshayahu Wolfsberg, "Introduction," in Abraham Berliner, *כתבים נבחרים* (Jerusalem: Mossad ha-Rav Kook, 1969) ix.

29 Moses Schick, *שאלות ותשובות מהר"ם שיק על יורה דעה* (Munkacs, 1880) #331, #332, #333, #334 [111a and 112a-b] (henceforth Maharam Schick, *יורה דעה*, אורח חיים, #307 [102a]).

30 For a comprehensive discussion of R. Schick's responsum, see David Ellenson, "'For the Heretics Have Arisen': Maharam Schick and the 1876 Controversy over Orthodox Secession from the General Jewish Community in Germany," in David H. Ellenson, *Between Tradition and Culture* (Atlanta: Scholars Press, 1994) 41–58. See also Katz's discussion in, "Sources of Orthodox Trends," 34. On the Hirsch-Bamberger debate, see below.

31 Maharam Schick, אורח חיים, #307 [102a].

32 This, he based on the verse, Lev 20:26: *I am the Lord who has separated you out from among all the nations*. See similar proclamations by Maharam Schick regarding the Neolog in Maharam Schick, אורח חיים, #305 [101b]. See Katz, *ההלכה במיצר*, 19–20 where he discusses the new phenomenon which was exhibited here of justifying strict legal rulings on the basis of original homiletical interpretations of verses in the Bible. This trend, he suggests, was a sharp departure from the normative halakhic process which until then had been utilized. Katz concludes that this was a prime example of the transformation of observant Jewry from the pre-modern "traditional" approach to the modern movement known as Orthodoxy.

33 In 1881, a group of Jews from the town of Högyész sought to secede from the main Status Quo community and create an Orthodox entity. They based their position on the decisions of Maharam Schick. The rabbi of the town, R. Elijah Menahem Goitein, turned to R. Samson Raphael

Whether the practical steps prescribed above by Maharam Schick were actually acted upon by his followers is a question open to discussion.³⁴ What becomes abundantly clear from his statements is that the Orthodox did not limit their descriptions of the Reformers as members of a separate religion to political situations such as when bringing their case before the government. Rather, even in internal discussions with an esteemed colleague, Maharam Schick sought to promote such views. One can argue that his letter applied to German Reform Judaism and he would not necessarily have expressed himself as strongly in regard to the more moderate Hungarian Neolog community. Based on the discussion cited above regarding the Jewish Congress and the policies that he enacted, however, it would appear that in his eyes there was little room for distinction between the two liberal trends.

Following his mentor, Rashban remained consistent in his outwardly negative appraisal of the Neolog's actions at the Congress and their lifestyle in general. Nonetheless, his opinion regarding ongoing interaction with the Neolog was a complete departure from that of Maharam Schick. He consistently expressed the belief that there was still hope for the Neolog to remain within normative Jewish life, and he saw cooperation and unity rather than division as the means that would produce results.

This point comes across very clearly in an 1888 letter of protest to his uncle and teacher R. David Schück. The latter had conferred rabbinical ordination upon one of his students on the condition that he only accept a pulpit in a synagogue which was part of the Orthodox organization. Regarding the grave connotations of such a stance Rashban stated:

If we force those who are well-versed in the intricacies of divorce and marriage not to go and make halakhic decisions (להורות) for them (the Neo-

Hirsch for his opinion. Notwithstanding his support for the decision of the Hungarian Orthodox to secede from the Congress, in this halakhic essay he rejected Maharam Schick's approach when applied across the board to all Jewish communities without consideration of the specific nature of the local collective. That being said, due to his fear of hostile reactions from his Hungarian Orthodox colleagues, R. Hirsch decided not to publicize his responsum and even forbade R. Goitein from utilizing it within his community. R. Hirsch's responsum was first published from manuscript by Mordechai Breuer in *המעיין* 29, 1 (1989) 21–29. See p. 30 for comments by Breuer. See also the extensive discussion in Katz, *A House Divided*, 272–77.

³⁴ After the German Reform conference in Braunschweig in 1844, two prominent rabbis, Rabbi Solomon Eger of Posen (son of Rabbi Akiva Eger and brother-in-law of the Ḥatam Sofer) and Maharam Schick, proposed a ban on marriages with Reform Jews. Katz, *ההלכה במיץ*, 160–62, suggests that Maharam Schick's young age at the time that he made this statement, and the fact that once he took on a position of leadership within Hungarian Jewry he never repeated this idea, prove that this was not his consistent policy. See Rashban's discussion of Maharam Schick's 1844 letter in Schück, *חמשה עד משה*, 27a. There he says that Maharam Schick also suggested forbidding marriages with Neolog-affiliated Jews in Hungary, but that he only did so as a means to force wavering communities into joining the Orthodox organization.

log), automatically there will be an increase in disqualified ones (פסולים) and bastards (ממזרים) because they will be forced to seek out bad teachers who themselves are sinners . . . and in the course of a few years their status will be as Karaites of which the *Shulkhan Arukh* rules we are forbidden to marry. Thus, in our generation, if God-fearing judges, teachers and ritual slaughterers are not sent to the Congress communities . . . in this two wrongs will have been done: one, that we are placing stumbling blocks before them, two, via them we will also encounter these same problems.³⁵

Both a practical and an ideological point were made by Rashban here. The decline in the level of religious leaders who tended to the needs of the Neolog would inevitably lead to problems of pedigree for the Orthodox. This, in itself, was a strong argument against R. David Schück's restrictive clause. Yet if Rashban's primary concern was for the Orthodox, he could have taken the position that Orthodox children be prevented from marrying those outside the sect. His emphasis was, rather, on retention of the normative Jewish identity of the Neolog as well, and preventing them from attaining the status of the forbidden Karaites which his master Maharam Schick had already openly attached to them.

THE STATUS QUO

The role of organizational affiliation in defining a person or a community's religious identity assumes its full significance when Maharam Schick's view of the Status Quo is juxtaposed with that of Rashban. Recall that the Status Quo rabbis and communities remained committed to traditional interpretations of Jewish observance, but refused to join or support the independent Orthodox national organization.

Maharam Schick felt betrayed by those who identified as Status Quo. He did not question their personal observance of the commandments, and he even recognized their good intentions. His rift with the Status Quo, rather, was exclusively over their decision to remain outside the Orthodox organization, thus weakening its strength vis-à-vis the Neolog and the government. In 1872, Maharam Schick wrote a letter rebuking an unnamed rabbinic authority – almost certainly the esteemed Rabbi Meir Perles of Nagyvárad (Szatmár county), who cooperated with his community's decision to refrain from joining the Orthodox organization. R. Perles also supported the decision of the Kassa community to identify as Status Quo.³⁶ Maharam Schick began with an emotional attack on the Status Quo as a whole for refusing to join the Orthodox community, with a simple question:

³⁵ Schück, אבן העזר, #33 [29b].

³⁶ See Jacob Katz's brief summary in, "Sources of Orthodox Trends," 33–34; Cohen, חכמי הונגריה.

How can you sanction the Status Quo, even if you do not suspect them of being agents and converts of the people of the Congress? Is it not they who stood by on the day the strangers sent the soldiers of the Torah into exile . . . because they did not come to the help of the Lord against the mighty (Judges 4:5)?³⁷

The initial sources of iniquity were the actions of the Status Quo after the Congress. They may not have been equal to the Neolog, but they certainly deserved to be cursed along the lines expressed by Deborah the Prophet regarding those tribes of Israel who did not come to battle with Barak against Sisera and the Hazorites.

The ramifications of Maharam Schick's attitude, however, went beyond the sphere of allegiance and morality – there were practical manifestations as well. For example, Maharam Schick claimed that by rendering their Jewish homes vulnerable to the dangerous influences of the Congress, those who did not enter the Orthodox agreement were remiss in their observance of the positive biblical commandment to build a fence around one's roof (Deuteronomy 22:8). Furthermore, the Status Quo had transgressed the biblical prohibition against swearing falsely because their commitment to the Torah required them to fulfill the commandment "to guard oneself" (ונשמרתם, Deut 2:4). Most significantly, R. Moses Schick gave his approbation to sanctions on the religious judges,

148–49. On the addressee of this letter see Greenwald, לתולדות הרפורמציון, 104, where he states unequivocally that this letter was sent to Rabbi Meir Perles. R. Perles was the most outstanding *yeshivah* head and respected halakhic authority who chose to maintain his own community as Status Quo. His stature, coupled with the fact that at the Congress he had actively identified with the Orthodox, caused his decision to remain outside the Orthodox camp to be seen as a serious challenge to efforts to gain support for a separate organization. On R. Perles, see N. Ben-Menachem, "וספרים מספרים שונים," (section A) תנינים 3–4 (1972) 48–51; Cohen, חכמי טראנסילוניה, pt. 2, 197–98; Greenwald, לתולדות הרפורמציון, 101–4; Yekutiel Yehudah Greenwald, "אגרות גדולות," *Sinai* 18 (1946) 229; Schwartz, הגר, שם הגדולים מארץ הגר, 2, letter "mem," no. 27. Both Cohen and Greenwald make the claim that R. Perles remained outside the Orthodox organization because his sons-in-law were non-Orthodox rabbis, and because his nephew was the rabbi of the Neolog synagogue in Kassa (R. Perles attended his installation). Such statements do not take account of the fact that he was the first choice of the town of Eisenstadt to replace R. Hildesheimer when he left for Berlin – clearly a sign that he was generally viewed as representing the moderate wing of the Hungarian Orthodox rabbinate. This identification was already evident at the Congress, as R. Perles was among the group led by R. Hildesheimer. See the joint communiqué printed by this faction and affixed with their signatures in the Orthodox weekly *Magyar Zsidó*, reproduced by Ben-Zion Jacobowitz, זכור ימות שולם א' (Bnei Brak: Yeshivat Ohel Yosef, 1986) Appendix 32b.

37 Maharam Schick, אורח חיים #307 [102a]. See the fascinating reference to this responsum by the grandson of R. Samson Raphael Hirsch, in Isaac Breuer, *Der neue Kusari: Ein Weg zum Judentum* (Frankfurt a.M.: Rabbiner Hirsch Gesellschaft, 1934) 112. The source is discussed in Katz, *A House Divided*, 276–77.

ritual slaughterers, and wine of the Status Quo.³⁸ These steps were deemed necessary in an atmosphere in which "... one finds despired, frivolous, and unstable ones – lovers of the Congress and lovers of the Status Quo – who look to bring about in evil ways, Heaven forbid, the cessation of communal life among the defenders of the faith."³⁹ Casting aside distinctions between the Status Quo and the Neolog in one sentence, Maharam Schick highlighted the common threats posed equally by both. In another responsum, Maharam Schick was even more succinct: "The Status Quo has no hope of surviving . . . and all who lend a hand to sinners – the people of the Congress – the law is the same for them."⁴⁰ Trustworthiness in religious matters was not measured by objective observance of precepts, nor by theological beliefs. It was primarily a reflection of communal affiliation.

Six years later, in 1878, Maharam Schick was asked by Jacob Laufer, an official from the community of Tapolcsány (Northwestern Hungary, Nyitra megye), whether one was obligated to "stand firm, and enter the fray" in order to bring the Status Quo into the Orthodox organization.⁴¹ Experience had shown, Maharam Schick wrote, that even if the members of the Status Quo were "holy and pure" in their observance, the orientation of the community could change easily if it was not under the right leadership. Therefore, it remained proper for God-fearing Jews to follow the words of King Solomon: *Blessed is the man who is always in fear* (אשרי אדם מפחד חמיר) (Proverbs 28:14). One could never feel secure in such matters, and this left no choice but to take a defensive stand which precluded association with any potentially dangerous company.⁴²

This underlying philosophy of fear and distrust must be appreciated in light of Maharam Schick's subsequent sympathetic comments regarding the predicament of the Status Quo:

38 To which sanction Maharam Schick referred is a subject of debate. One would assume that it was the 1872 decision to ban the Status Quo reached by R. Isaiah Silberstein, the head of the religious court in Vác (central Hungary, 33 kilometers north of Budapest). The latter was brought in to decide whether the שומרי הדת in Kassa had the right to separate themselves from the general community. See Lavy, פנקס הקהילות – הונגריה, 284–85. Jacobowitz, זכור ימות עולם א', 282–93, however, refers to a letter written already in 1871 to the community in the town of Marosvásárhely (Transylvania) which vehemently forbade use of meat from the Status Quo slaughterer. The letter was signed by the leading rabbis in Hungary, including the "כתב סופר" (R. Shmuel Binyamin Sofer, the son of the Ḥatam Sofer and heir to his rabbinic seat in Pressburg), Maharam Schick, and R. Ḥayyim Zvi Manheimer of Ungvár.

39 Maharam Schick, אורח חיים, #308 [102b].

40 Maharam Schick, אורח חיים, #310 (104a).

41 Maharam Schick, יורה דעה, #333 [112a–b]; Cohen, חכמי הונגריה, 177–78, suggests that this responsum was probably directed at a hasidic type of Status Quo community.

42 See Schück, אורח חיים, #330 [111a], where he explained why Maharam Schick took a more strict position than Ḥatam Sofer regarding the permissibility of using a sponge instead of orally cleaning off the blood during the "metzizah" component of a circumcision.

I know that there are a number of Status Quo communities which due to their concern and fear of discord . . . reason that it is preferable to remain in an association with those who do not act properly and their hearts tell them that through brotherhood they will fix even the despised. But experience demonstrates that in the majority of situations the despised spoil the good ones who have yet to attain strong faith.⁴³

Maharam Schick was completely aware of the sincere motives of the Status Quo rabbis. Nonetheless, in times when fear had to serve as the guide in choosing the most effective tactics, compassion had to be set aside. With this point in mind, it is not surprising that later that same year (1878) Maharam Schick ruled for a group of Orthodox that had broken away from the main community in the small town of Sály (Borsod county, south-west of Miskolc), that it was better for them to pray in a private home than in the Status Quo synagogue.⁴⁴

That being the case, according to Maharam Schick, there was a simple remedy that would solve this entire problem for the Status Quo: "Surely if this new sect were to accept upon themselves the statutes of the Orthodox organization . . . there would be room to rule [leniently]."⁴⁵ Unlike the immediate aftermath of the Congress, when his sharp rebuke left little room for differentiation between the non-Orthodox factions, here he recognized the good intentions of the Status Quo and their basic commitment to observance of the *halakhah*. Therefore, in contrast to the Neolog, he left open the possibility that the Status Quo would recognize their mistake in failing to associate with the Orthodox.

Herein, then, lies the key to the paradigm which was R. Moses Schick's legacy to Hungarian Orthodoxy. Despite his acute awareness of the predicament of the Status Quo, his personal formula for Jewish continuity and the decisive factor in all his policies was his commitment to formal communal affiliation and separation from all those outside this framework. While Maharam Schick may not have been willing to agree with all the declarations of the most extreme elements in the Hungarian Orthodox community, his basic premise was identical, and it was simply taken to its logical conclusion by many of his heirs during Rashban's tenure.⁴⁶

43 Schück, אורח חיים, #330 [101a].

44 Maharam Schick, אורח חיים, #36 [10a]. See the brief discussions of this responsum in: Cohen, חכמי טראנסילווניה, 149; Jacobs, *Theology in the Responsa*, 230.

45 Maharam Schick, אורח חיים, #36 [10a].

46 In Maharam Schick, יורה דעה, #25 [8b-9a], R. Schick appears to offer his lone lenient ruling regarding the Status Quo. Written four months before his death, the question was whether the dishes of a woman who accidentally bought meat from a Status Quo slaughterer were rendered unfit for use with kosher food. Maharam Schick could not categorically prohibit the use of her dishes, since no one had ever questioned the personal integrity of the slaughterer, and his acceptance of the job with the Status Quo community was purely economically motivated. That said,

R. Shlomoh Zvi Schück's view of the Status Quo was significantly more favorable than regarding the Neolog. Although he continued the trend of outwardly defending Maharam Schick's actions at the Congress, it is evident that this was simply a formality. Reverence aside, his departure from the thinking of his teacher is vivid.

Here it is important to mention that, beyond his ideological outlook insofar as the Status Quo was concerned, personal motivations likely entered into his considerations. Two of Rashban's sons married daughters of Status Quo rabbis. That said, the fact that these were the matches deemed most appropriate for his children reflected his prior reputation as one who openly bucked the dominant Orthodox trends.⁴⁷

The first entry in Rashban's entire responsa collection is a letter from 1882 to R. Meir Perles, the same unnamed figure to whom Maharam Schick likely addressed his 1872 letter regarding the Status Quo. It is an urgent request to R. Perles to lead a call for all parties who recognize the *Shulḥan ʿarukh* as the basis for Jewish law to unite. The point of departure and underlying theme is that there was absolutely no difference between Orthodox and Status Quo Jews: "... they are all individually unto themselves pure (טהורים)." ⁴⁸ Therefore, it was unfortunate that they did not combine. The advantage of such a unification of forces would have been felt primarily in strengthening the camp of the believers. Additionally, it might have even made the Neolog realize that "we are all from the same Father."⁴⁹ Among others, he cited the talmudic statement that, despite the sharp differences between the Houses of Hillel and Shammai on legal issues relating to pedigree, they "did not abstain from marrying [one another]." ⁵⁰ By contrast, said Rashban, in late nineteenth-century Hungary the dominant spirit of debate – both between the Orthodox and the Neolog and equally among the two groups that maintained allegiance to the *halakhah* – was complete ignorance of "what constitutes love and affection."⁵¹

At the point in his career when he sent his appeal to R. Meir Perles, then, R. Shlomoh Zvi Schück certainly held no animosity toward the Status Quo. Yet he was still at a stage in his development when he appreciated organizational allegiance as the proper method for achieving his openly-stated goals. Rashban's theoretical departure from the world view of Maharam Schick had already

he added that in order to be totally sure, the woman should immerse her dishes (even the porcelain ones) three times in boiling hot water (הגעלה) as one does with metal pots and flatware when they have attained unkosher status, or so that they may be used on Passover.

47 Cohen, חכמי הונגריה, 157–58; Hershko, תולדות קרצאג, 29.

48 Schück, אורח חיים, #1 [5a].

49 Schück, אורח חיים, #1 [5a].

50 b. *Ed.* 84a; See the same idea expressed in Schück, מנחה עד מנחה, 41a–b.

51 Schück, אורח חיים, #1 [5a].

begun to take its course, but he had yet to abandon the practical model which his mentor had created.

Later that same year (1882), Rashban took a stand on a legal issue which testified once again to his respect for the religious sincerity of the Status Quo.⁵² In a letter written to Rabbi Hayyim Zvi Manheimer of Ungvár, a leading Orthodox figure and one of Rashban's mentors, he repeated his tacit rebuke of the Status Quo for their actions after the Congress.⁵³ However, he lashed out primarily at the Orthodox:

I have come in fear and panic [regarding] the declaration which says that the elders of the generation, including your honored and wise one, have agreed to enact a ban on those communities which did not join the *Konstituierung* [Orthodox statutes] agreement and that it is forbidden to make legal decisions or perform ritual slaughter for them. . . . How can communities in which giants of Torah and good deeds sit, be so insulted? Second, this is a decree which the public cannot fulfill. Third, and in my opinion the essence, based on this, the Congress (Neolog) communities will be strengthened, and multiply in our country, for they will say: "Even the Status Quo, who are enveloped and exist according to the word of the *Shulḥan 'arukh*, are excommunicated like us."⁵⁴

His concerns were for the honor of the rabbis of the Status Quo communities, the fact that the public would never be able to adhere to such a restrictive clause, and most of all for the ramifications of the sanctions against the Status Quo in relation to the broader issue of the future of Hungarian Jewry. Taking such a step would only further prove to the Neolog that they shared no common ground with the Orthodox, and therefore no hope for bringing them back to the fold would remain.

Rashban concluded the letter to R. Manheimer with a description of the criteria which he used to decide whether a community conducted itself along common lines with the proper Jewish outlook: "Those communities that base themselves on the *Shulḥan 'arukh*, even if they have committed multiple sins by not joining in one association, . . . as long as their lives and existence are founded

52 One could conjecture that this call for Jewish unity came at least partially in response to the infamous Tiszaeslár blood libel that erupted that same year. Yet the chronology of this responsum does not bear this out. Based on the dating attached to his responsum (ג' ריקרא) Rashban's appeal to R. Manheimer was penned on March 25, 1882, while the initial disappearance of the young women that instigated the blood libel only occurred on April 1, and the investigation of the case by local authorities did not commence until May 19. See Nathaniel Katzburg, "תולדות היהודים, פנקס הקהילות – הונגריה, 41," in Lavy, *הונגריה*, 249.

53 On R. Manheimer see Cohen, *חכמי הונגריה*, 351; Yehudah Spiegel, "אונגוואר," in Yehudah Leib Maimon, ed., *ערים ואמחות בישראל ד'* (Jerusalem: Mossad ha-Rav Kook, 1950) 18–19; Schwartz, *מורשת רבי הונגריה*, 249.

54 Schück, *אורח חיים*, #173 [137a].

orally that it is forbidden to associate with rabbis that sit in communities that do not have the name Orthodox, what shall a rabbi in a community such as yours do? From whom shall he ask for consent? Who will respond in our country? And if you will go request the concurrence of those rabbis who sit in Congress communities, what value will it have, if it is from people who are generally unlearned in the fine points of divorce and marriage?⁶⁰

As a Status Quo rabbi, R. Schreiber could not fulfill such a stringent position even if he wanted to, because his political affiliation delegitimized the authority of his legal decisions.⁶¹ As long as he did not have the name "Orthodox," he was a pariah in the eyes of fellow Orthodox rabbis. Here was a telling illustration of what it meant to be a moderate *halakhah*-abiding rabbi in post-Congress Hungary.

The latest discussion of Rashban's view of the Status Quo in his responsa was written in 1901. It answered a direct inquiry from a lay person as to what Rashban thought of Status Quo communities.⁶² Rashban's response was his most outspoken defense of the non-Orthodox communities and criticism of their attackers. He repeated his disapproval of the prohibition against the Status Quo (he even leveled doubt as to the number of rabbis who actually gave their initial approval to the petition). Moreover, Rashban restated his belief that the crucial issues were having a righteous rabbi and a reliable ritual slaughterer – an open rejection of the policy which Maharam Schick set into motion. Even if the intention of creating a separate Orthodox organization had merit, "... after many God-fearing communities, which are led by full-fledged righteous men, great ones in Torah scholarship and in deeds ... did not want to join the agreement ... who can say that there is any lasting significance to such declarations?"⁶³ Thus, the only concrete result of the various decrees was that,

... in our generation they excommunicate and cast out righteous ones who live in a city and a community that does not possess the name that they have chosen ... and they draw closer in lovingkindness those who spread

60 Schück, אבן העזר, #13 [18b].

61 Rashban did suggest that in order to organize a proper rabbinical court, as was needed to write a divorce writ, he should contact his brother-in-law, Rabbi Meir Rosenfeld of Miskolc and his son-in-law's father, Rabbi Kalman (Kalonymus) Weiss of Sátoraljaujhely. R. Rosenfeld's community was Orthodox, but according to הונגריה – פנקס הקהילות, 362, he was considered a moderating force in a series of controversies that erupted in his town between the extreme Orthodox and the modernists. R. Weiss began his career as the Orthodox rabbi in Hejocsaba (near Miskolc) but his later position was in a Status Quo community. See: Lavy, הונגריה – פנקס הקהילות, 271, 514; Cohen, חכמי טראנסילווניה, 96–97; Cohen, חכמי הונגריה, 452.

62 Schück, אורח חיים, #85 [79a–b].

63 Schück, אורח חיים, 79b.

maliciousness about them. . . . It is not enough that people of the Congress hate us, in addition, they (the Orthodox) strive to distance and embarrass those who go according to the name Status Quo.⁶⁴

The responsum ends with a statement of Rashban's conviction that "if there were peace" between Orthodox and Status Quo there would be less apprehension. And, if God-fearing Torah scholars would perform pastoral work and teach among the Neolog, they too would learn the truth, see their mistakes and the conflict would end. With all the above in mind, Rashban recommended to his correspondent that as long as he abided by Jewish dietary laws and brought up his children according to the Torah it should not matter what others call one another.

By this point in his career, Rashban was no longer capable of rendering even token service to formal distinctions between the Orthodox and Status Quo. A rabbi who had spent four years trying to convince his own congregants to join the Orthodox organization was by 1901 advising people openly not to take such associations seriously. The best that he could muster was a fleeting reference to the, by then, historical episode at the time of the Congress. Not only did Rashban value the religious commitment and observance of the Status Quo as on the same level as the Orthodox, his sympathies for their plight betrayed his own identification with their position.

THE ORTHODOX

R. Shlomoh Zvi Schück's view of his Orthodox colleagues and their organization has already been mentioned. Further inspection will demonstrate that Rashban's lack of faith in the value of the separation approach was expressed not only in his appreciation for non-Orthodox Jews, but in his portrayal of the very nature of the decay within the Orthodox movement.

Rashban's comments here were directed at a situation that had deteriorated in his eyes considerably since the death of Maharam Schick. Yet the basic premise which he rejected, namely the sanctification of organizational affiliation even when one's own personal beliefs were compromised, is a theme which Maharam Schick addressed in his own lifetime. Those who took up his mantle further expanded upon an idea that he had already cultivated.

The prime example of Maharam Schick's willingness to sacrifice his own opinion for those of the Orthodox majority appears in his famous responsum regarding the Michalovic conference of 1865. I refer to the ultra-Orthodox convocation led by R. Hillel Lichtenstein and R. Akiva Yosef Schlesinger. At Michalovic, ten prohibitions against changes in synagogue customs were pronounced,

64 Schück, אורח חיים, 79b.

including one forbidding the use of the vernacular (Hungarian or German) in the synagogue – not only for prayers, but even for the rabbi's sermon. After a rigorous discussion of why the prohibition on public speaking in the vernacular had no basis in the *halakhah*, Maharam Schick summed up his practical ruling, "... but my colleagues have outnumbered me and they have decided against my opinion, therefore, in fear and trembling I must accept their words" (חברי רבו עלי והסכימו שלא כדברי, וצריך ומוכרך אני לקבל דבריהם באימה וביראה).⁶⁵ Why would a figure of Maharam Schick's stature give in to a group of ultra-Orthodox ideologues? By no means was he convinced that he was wrong regarding the technical legalities of this issue.⁶⁶ Rather, he acceded because they ultimately shared a common goal, to draft any means deemed necessary to defend what they viewed as authentic Judaism from further infiltration by modernity. Since he was convinced of the basic righteousness of the endeavor, Maharam Schick was willing to submit on one of the details. The implication for most of his followers was clear: in their generation the Orthodox represented the defenders of true Judaism, therefore it was imperative that all its members conform to the same positions.⁶⁷

Another student of Maharam Schick who deviated from his mentor's outlook was Rabbi Naftali Sofer.⁶⁸ In 1887, Rashban wrote to R. Sofer to congratulate him on the impressive introduction to his work *מטה נפתלי*.⁶⁹ Specifically, he applauded R. Sofer for commending those rabbis who chose to serve in non-Orthodox communities in order to maintain proper ritual and religious standards. The real evildoers, said Rashban, were those who exacerbated the feuds among the Jews by emphasizing the names and affiliations of people rather than their actions. Rashban even went as far as to accuse those who attacked the non-Orthodox of being "Sabbath desecraters," although he did not explain the precise meaning of this heavy-handed charge.

65 Maharam Schick אורח חיים, #70 [20b–21a].

66 In Hildesheimer, "שאלות ותשובות מהר"ם שיק," the author demonstrates conclusively that Maharam Schick was uncomfortable with the ban on speeches in the vernacular issued at Michalovic. Indeed, Hildesheimer produces a letter in which Maharam Schick gave tacit permission to a rabbi to take a position in a community where he had to speak in German. Yet, Hildesheimer does not dispute the fact that, to the very end, Maharam Schick maintained that he was obligated to formally support even those statutes decided upon at Michalovic for which he could not find halakhic basis. Schück, אבן העזר, #102 [92a] claims that Maharam Schick himself spoke German in public, read the German Orthodox newspaper, *Der Israelit*, and encouraged his children to learn the language as well. Hildesheimer, "רבני הונגריה ואסיפת מיכאלוביץ," 946, points out that other students of Maharam Schick contradicted this claim of Rashban.

67 In Schück, מחשבת עד משה, 39b Rashban explained Maharam Schick's actions after the Michalovic conference as stemming from his unwillingness to support "מחלוקת" (infighting). As to his own position, Rashban called himself "... a student who disagreed with his master."

68 On Rabbi Sofer, see Schwartz, שם הגדולים החדש, letter "nun," no. 8, 20a–21a.

69 Schück, אורח חיים, #107 [81b–82a].

In another undated correspondence with his son Rabbi Berakhyah Schück that was written before 1901, Rashban described himself as a lone figure who was willing to return those who had swayed and separated themselves from traditional observance. He then proceeded to illustrate the difficulty of this task by describing the negative qualities that characterized the majority of the Orthodox:

One faction gravitates naturally toward accepting stringencies (חומרות) and follows the advice of the Hasidim . . . and every new idea is viewed by them as prohibited and heretical. They are like dogs who guard their master – and anyone who draws near to his home, be he righteous or evil, friend or foe, in their eyes is assumed to be a thief or murderer whom they bitinglly lash out against with the aim of slaughtering him alive (play on the Hebrew word לטרפו which can also mean to declare unkosher).⁷⁰

Rashban's candid appraisal of his Orthodox contemporaries left no doubts as to the degree of his disagreement with them. Their fear of God was misguided and this had quite serious consequences. Moreover, the graphic description of them as bloodthirsty hounds ready to pounce on any intruder demonstrates the degree of hatred which he saw manifested in the actions of the ultra-Orthodox.

A correspondence written around the year 1900 between R. Shlomoh Zvi Schück and R. Haim Hezekiah Medini, the Sephardic Chief Rabbi of Hebron and author of the encyclopedic work שדי חמד,⁷¹ was the vehicle for one of Rashban's most extensive discussions of the Orthodox. This letter is significant, because whereas in the aforementioned responsum Rashban presented one unequivocal view of the Orthodox and their transgressions, here he divided the types of Orthodox reactions into two groups (both of which he considered wrong). In addition, for the first time Rashban admitted that the chances of putting an end to the deep-seated divisions among Hungarian Jewry were highly unlikely. Just as it has been said that there were three things which could never be remedied – hatred, sickness and poverty – so the situation in his generation should unfortunately be added to this list of problems which defied solutions.⁷²

On this somber note he set out to portray the main components of this incurable disease. The first group was the Hasidim who had absolutely no wits about them and spread vicious rumors as well as embarrassed in public anyone

70 Schück, אורח חיים, #140 [107a–108a]. On R. Berakhyah Schück, see Cohen, טראנסילווני, 255. The correspondence cited here was clearly written before 1901, because it was addressed to his son in Stuhkweissenberg (Székesfehévár) where he served until moving to Temesvár in 1901.

71 Haim Hezekiah Medini, שדי חמד (Warsaw: Ha-Ahim Shuldberg, 1892). See Meir Benayahu, "Rabbi Hayyim Hizkiyahu Medini," in Leo Jung, ed., *Men of Spirit* (New York: Hyamson, 1964) 109–21.

72 Schück, אבן העזר, #174 [139a–40a]. Although no date appears, it was definitely written after 1900, because Rashban mentioned that this letter accompanied a copy of "על טפרי שאלות ותשובות רשב"ן על" which was published in 1900.

who did not say amen to all their words. The second tier was those who, while actually being more discerning people, refused to disagree with the extremists, "... they answer amen to all their ideas with the modest excuse that Heaven forbid for them to do such an evil as to stand up and disagree with the Hasidim."⁷³ To their claims of modesty Rashban retorted: "All those who see with a clear eye recognize that it is their own conceit which speaks from their throats in order to insure that they sit at the head and be counted among the greats of the generation. This is modesty whose source is conceit."⁷⁴ In a sense, for Rashban this second category of perpetrators was guiltier than the first. As opposed to the others who were convinced of the righteousness of their actions, the second group of rabbis chose to support the extremists out of self-interest rather than conviction. Although he never made any direct connection between such figures and Maharam Schick, the analysis above of Maharam Schick's actions in relation to the statutes agreed upon at the Michalovic conference suggests that those who chose to give in to the majority even if they disagreed could look to his behavior there as a precedent.

Both the images which R. Shlomoh Zvi Schück used to portray the Orthodox ("evildoers," "bloodthirsty dogs") as well as his efforts to accuse them of actual transgressions ("Sabbath desecraters," "slanderers") expressed the ill feeling that he had regarding them. Indeed, he could not even pay homage to the idea that, despite their operational differences, he and his Orthodox colleagues shared common goals. The reverence which was accorded the majority view within the Orthodox organization, and the insularity and defensiveness which it projected, were not simply technical issues. They reflected a worldview from which Rashban had distanced himself. No common lifestyle or shared background could fill the abyss which had grown between him and the accepted Hungarian Orthodox leadership.

BEYOND SURVIVAL

Rashban's evolution from grassroots supporter to in-house critic of Hungarian Orthodoxy reflected his ever-increasing perception of the destructive quality which communal separation engendered. Indeed, he recognized the importance of providing a framework which would protect the interests of observant Jews and enable them to maintain their religious lifestyle. Yet his eventual conclusion was that the Hungarian Orthodox communal organization had evolved into a vehicle for unqualified hatred and exclusion of various individuals and groups, regardless of the sincerity of their intentions.

The discovery and exploration of rabbinical figures like R. Shlomoh Zvi

73 Schück, אבן העזר, #174 [139b].

74 Schück, אבן העזר, #174 [139b].

Schück reveals that an environment of internal debate regarding Hungarian Orthodoxy's aggressive response to modernity continued to exist through the early twentieth century. Simultaneously, the sense of being under attack and of professional loneliness expressed by Rashban illustrates the difficulties in maintaining unconventional positions in a milieu in which modern culture and those Jews who had internalized its worldview were vilified. Nonetheless, a telling feature of his career and biography is that, despite antagonism to his positions, no efforts were made to formally disassociate him from the Hungarian Orthodox rabbinate. While he was rebuked in print, and one colleague even suggested that his publications were "books of heresy" and deserved to be burned or at the very least hidden away, no petitions were signed nor actual sanctions enacted against him.⁷⁵

The ability of Rashban to remain part of the Orthodox orbit testifies to the power of organizational labels for defining who was an upright Jew within the Hungarian framework. Even if they were not pleased with his views, as long as Rashban and his community did not formally abandon the national Orthodox organization, no benefit could be found in losing a member. The fact that he came from a distinguished rabbinical family and was a disciple of Maharam Schick probably did not work to his disadvantage either. Yet, as the case of the renowned R. Meir Perles (discussed above) who led a Status Quo community reveals, had Rashban chosen to leave the Orthodox association there would

75 For published critiques of Rashban, see: David Zvi Katzburg, "ביקורת על סידור רשב"ן," *תל תלפיות ח'* (1900) 1–3; David Zvi Katzburg, "שימת עין על ספר מחשה עד מחשה," *תל תלפיות יב'* (1904) 33–36. *תל תלפיות* was published under the auspices of R. Isaiah Silberstein, the Orthodox rabbi of Vác, and head of the religious court that initially banned the Status Quo. See the rebuttal regarding the issue of Rashban calling his book by his own name, published by R. David Sperber, "הערת על," *תל תלפיות ח'* (1900) 27, 68. In an oral interview with R. Meir Schueck (June 13, 1990) the grandson of Rashban (son of Berakhya Schück and heir to his pulpit in Temesvár), he suggested that the impetus for Katzburg's attacks was clearly Rashban's incessant criticism of the political structure of the Orthodox organization, of which *תל תלפיות* was his official mouthpiece. Also see: Mordechai Leib Winkler, *יורה דעה, חכמי טראנסילוניה* (Tolcsva: B. Friedman, 1912) 39a–b. In his index to the responsa he listed the entry as, "Decision regarding (Rashban. Minhagim [traditions]) which was written by a heretic." R. Winkler was one of the most prominent halakhic authorities in Hungary, and had previously been a close friend of Rashban. On R. Winkler, see *חכמי טראנסילוניה*, 98–99. Of interest is the fact that one of the people who gave R. Winkler rabbinic ordination was R. Meir Perles. Winkler's accusations actually received a written response in the form of a short pamphlet defending Rashban and written by R. Berakhya Schück in Jüdisch-Deutsch called, *להצדיק הצדיק* (Sasfalya, Hungary: Meir Klausner, 1912). Another strong statement against Rashban was written by Rabbi Hayyim Elazar Shapira (the Rebbe of Munkács) in his *מנחת אלעזר* (Munkács: Kahana and Fried, 1902) sec. 2, #48, 47b. Finally, there was also a complete book which went through both volumes of the *שאלות ותשובות*, *רשב"ן*, and made critical comments on individual responsa. However, this work was unique in that its criticism of Rashban did not allude to any personal or ideological animus. See Moshe Yehudah Kutna, *משפט צדק* (Przemysl: Knoller, 1914).

have been no limits to the sanctions enacted against him.

Looking beyond its specifically Hungarian character, the case at hand calls attention to an internal contest over policy that typifies numerous representations of Orthodoxy in modern times. The initial impetus for the rise of the separatist trend within Hungarian Orthodoxy can be described as “survivalist.” Namely, due to the major social and political changes that transformed nineteenth-century Central European society, many Jews who remained committed to strict observance of ritual law and custom as well as to traditional education felt that their lifestyle was under mortal attack. This condition was expressed most vividly through the events that surrounded the Jewish Congress of 1868–69. Fearing that the guidelines of their communal and educational institutions would be dictated by this new non-Orthodox-dominated government-sponsored national body, the Orthodox opted for belligerent tactics aimed at insuring their religious independence and self-determination.

Significantly, Rashban himself never unequivocally rejected this original survivalist mode of operation. His parting of ways only began in the 1880s and became more pronounced over time. This reflected, among other things, his liberation from absolute allegiance to his mentor Maharam Schick that came in light of the latter’s passing in 1879. I suggest, however, that it stemmed primarily from his sense that the central crisis that had provoked the dramatic actions of the previous decades had been neutralized. That is, after over a decade of separate organizational existence, the Orthodox had not only succeeded in surviving but had established their independence as a regular feature of Hungarian Jewish life. Under such circumstances, and particularly due to the detrimental fallout that this situation was producing, Rashban no longer felt comfortable with the normative and ever-increasing militancy of the Orthodox camp. This understanding is supported by his statement cited above epitomizing Maharam Schick’s approach through the verse from Proverbs (28:4), *Blessed is the man who is always in fear*. Rashban understood this attitude as a direct response to the menacing circumstances surrounding the Congress, and not as a long-term master plan.⁷⁶

Clearly the majority of his Orthodox counterparts thought differently. Their continued unwillingness to countenance any compromise, indeed their sustained efforts to sharpen the divisions – including vilifying those Orthodox individuals like Rashban who questioned the righteousness of this path – is testimony to their ongoing survivalist orientation. Put in sociological terms, for Rashban the Congress signified a singular “boundary crisis.”⁷⁷ Once the

76 Schück, אורח חיים, #330 [111a].

77 Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York, London, Sydney: Macmillan, 1966) 69.

new lines had been drawn it was no longer necessary to engage the same strict “maintenance” vehicles. For most Hungarian Orthodox authorities, by contrast, modern Jewish life engendered an ongoing “moral panic” that could only be countered by enthusiastic promotion of the survivalist separatism that had proven its effectiveness during the initial battle.⁷⁸

While the Hungarians have deservedly gained a reputation as the most zealous of Jewish Orthodoxies, Orthodox groups in other lands have also championed various forms of separatism as a response to perceived threats to their survival. Here I will briefly address two such examples, one from nineteenth-century Germany and the other from turn-of-the-twentieth-first-century United States. Each illustrates aspects of the paradigm of internal Orthodox policy conflict that emerges from the Hungarian scenario.

Recall that the same R. Samson Raphael Hirsch who articulated an ideology that synthesized Jewish religious commitment and modern culture was simultaneously the arch-advocate of Orthodox separatism in Germany. As described above, the most celebrated controversy regarding his political approach erupted in 1876 after he succeeded in attaining government sanction for establishing a completely independent Orthodox communal organization in Frankfurt am Main. The opposition of R. Seligmann Bär Bamberger to R. Hirsch’s call for all Orthodox Jews in Frankfurt to formally resign from the Reform-dominated *Gemeinde* precipitated an acrimonious debate between the two and their followers that did not subside even after the death of R. Bamberger in 1877.⁷⁹ What is notable in particular for the current discussion is that R. Bamberger had initially given his unequivocal support to R. Hirsch’s activities aimed at creating and sustaining a separate Orthodox entity, including his lobbying for civil legislation on this matter.

A number of scholars have offered valuable explanations for the Hirsch-Bamberger debate.⁸⁰ Additional insight can be gained, however, through

78 Erich Goode and Nachman Ben-Yehuda, *Moral Panics* (Oxford: Blackwell, 1994). See also Mary Douglas, *Risk and Blame* (London and New York: Routledge, 1992) 92.

79 Some of R. Bamberger’s children made peace with the Hirschians, and his son Rabbi Seckel Bamberger even served as a judge on the religious court of the separatist Orthodox community in Frankfurt am Main. Nonetheless, in light of my familiarity with the conflict between his father and R. Hirsch – including the latter’s decision to refrain from attending his adversary’s funeral – I was somewhat vexed to discover during a recent visit to the Frankfurt Jewish cemetery that R. Sekhel Bamberger is actually buried near R. Hirsch in the walled-off section created exclusively for his separatist community. Indeed, it brought to mind an even more ironic case of eternal proximity within German rabbinic history, see Sid Z. Leiman, “Mrs. Jonathan Eibeschuetz’s Epitaph: A Grave Matter Indeed,” in Leo Landman, ed., *Scholars and Scholarship in Jewish History* (New York: Yeshiva Univ. Press, 1990) 143.

80 See: Bleich, “The Frankfurt Secession Controversy”; Japhet, “The Secession from the Frankfurt Jewish Community under Samson Raphael Hirsch,” 113–16; Katz, “הרב שמשון רפאל הירש: המימין,” 113–16.

introduction of the interpretation offered above to Rashban's parting from the policies of his Hungarian Orthodox counterparts. Like Rashban's position at the time of the Congress, R. Bamberger appreciated the long-term danger posed to Frankfurt Orthodoxy's survival by remaining under the control of a communal board in which Reform sympathizers held sway. Therefore, initially he applauded R. Hirsch's activities aimed at neutralizing Orthodox dependence on their ideological adversaries. His change of heart took place when, in light of the threat of wholesale Orthodox abandonment and the massive tax revenue loss that would result, the leaders of the general community agreed to a compromise solution. Its central conditions were that, in return for maintaining their membership, the Orthodox would be entitled to absolute religious autonomy and that the community would support their institutions, including the hiring of an official Orthodox rabbi. Indeed, this agreement was eventually ratified. From that point until the last years of the Nazi regime, Frankfurt Jewry (as well as some other large German communities) encompassed a unified *Einheitsgemeinde* that was comprised of Reform and Orthodox divisions, and a separatist Orthodox *Austrittsgemeinde* that was led by R. Hirsch and his successors.⁸¹

For R. Bamberger, the central outcome of the 1876 settlement was the cessation of the existential threat to Orthodox religious life in Frankfurt am Main. One upshot was that the survivalist strategy that had justifiably been endorsed had run its course. A new dynamic needed to be advanced that would facilitate the ongoing healthy function of Frankfurt Orthodoxy and end the interdenominational vitriol that had come to characterize this historic Jewish collective. R. Hirsch was a complex ideologue and his aims in creating a totally independent Orthodox community may have had as much to do with his desire to liberate himself from more traditionalist forces within local Orthodoxy as to facilitate a full-fledged divorce from Reform.⁸² Nonetheless, his unequivocal advancement of a separatist ideology as the exclusive framework for German Orthodox life, even after a compromise had been reached, accentuated the degree to which the survivalist strategy was not merely a temporary solution to a boundary crisis. Like the Hungarians, for R. Hirsch it had evolved

רמזמאיל," 17–19; Katz, *A House Divided*, 257–66; Liberles, *Religious Conflict in Social Context*, 210–26; Matthias Morgenstern, *From Frankfurt to Jerusalem: Isaac Breuer and the History of the Secession Dispute in Modern Jewish Orthodoxy* (Leiden-Boston-Köln: Brill, 1995) 151–55, 188–207; Herman Schwab, *The History of Orthodox Jewry in Germany* (London: Mitre Press, 1950) 73–81; Leo Trepp, "Segregation or Unity in Diversity: The Controversy between Samson Raphael Hirsch and Seligmann Bär Bamberger and its Significance," in Stanley F. Chyet and David H. Ellenson, ed., *Bits of Honey* (Atlanta: Scholars Press, 1993) 289–310; Ya'akov Zur, *בין אורתודוקסיה לצייונות* (Ramat-Gan: Bar-Ilan Univ. Press, 2001) 41–44.

81 *Jerusalem: Yad Vashem*, 1992) 675–77.

82 See: Katz, "הרב שמשון רפאל הירש: המימין ומשמאל," 18–19; Katz, *A House Divided*, 257–26.

into the ideal vehicle for addressing the ongoing moral panic that he perceived. Indeed, his son-in-law and heir Rabbi Solomon Breuer – himself of Hungarian origin – advanced this proactive survivalist approach to new levels of internal Jewish animus during his nearly two-decade tenure in Frankfurt. According to the memoir of one of his students, “His hatred for everything and everyone not associated with secessionist Orthodoxy was boundless.”⁸³

Internal Jewish religious fractures in the Western hemisphere generally did not achieve this level of hostility – in part due to the lack of a local communal structure that lent itself towards power struggles over control of collective funds and institutions. Nevertheless, a version of Orthodox separatism emerged after World War II that once again highlights the survivalist outlook. Unlike those Hungarians and Germans who were unwilling to reconsider this worldview, however, there are indications that since the late 1990s some of those factions that promoted this strategy in America have veered toward a position that is actually reminiscent of Rashban’s approach.

Rabbi Aharon Kotler (1892–1962) was the founding head of the *Beth Medrash Govoha yeshivah* in Lakewood, New Jersey – today the largest institution of higher Torah learning in North America.⁸⁴ He is considered the main ideologue and architect of the renaissance of Lithuanian *haredi* Orthodoxy in North America after the destruction by the Nazis of its Eastern European origins. Upon his arrival as a refugee in 1941, R. Kotler positioned himself in direct opposition to all American Jewish religious movements – including

83 Memoir of Samuel Schapiro (1885–1960) published in Monika Richarz, *Jewish Life in Germany: Memoirs from Three Centuries* (Bloomington and Indianapolis: Indiana Univ. Press, 1991) 209. On R. Breuer, see Zur, *אורתודוקסיה לציונות*. His zealous and combative approach is celebrated in the epitaph inscribed on his tombstone in Frankfurt’s separatist Orthodox cemetery located at Rat-Beil-Strasse. Describing his own upbringing in Frankfurt, his grandson Professor Mordechai Breuer told me that on the anniversary of the death of Rabbi Nathan Adler – the mystic and teacher of the Ḥatam Sofer – members of the Frankfurt separatist community were confronted with a dilemma. R. Adler was buried in the old cemetery that was controlled by the unified community and into which they never ventured. The custom they developed, therefore, was to go to the spot outside the wall of the cemetery closest to his grave where they would collectively recite psalms in his memory.

84 On Rabbi Kotler and the founding and early history of his *yeshivah*, see, for example: Herbert Bomzer, *The Kotel in America* (New York: Schengold Press, 1985) 26–35; Yoel Finkelman, “Haredi Isolation in Changing Environments: A Case Study in Yeshivah Immigration,” *Modern Judaism* 22:1 (2002) 61–82; Yoel Finkelman, “Religion and Public Life in 20th Century American Jewish Thought” (Ph.D. diss.; Jerusalem: Hebrew Univ., 2002) 101–15 (see the many additional biographical sources cited in n. 2); Yoel Finkelman, “An Ideology for American Yeshiva Students: The Sermons of R. Aharon Kotler, 1942–1962,” *JJS* LVIII, 2 (Autumn 2007) 314–32; William B. Helmreich, *The World of the Yeshivah* (New York: Free Press, 1982) 40–45; Charles S. Liebman, “Orthodoxy in American Jewish Life,” *American Jewish Yearbook* 66 (1965) 67–69; Jonathan Sarna, *American Judaism* (New Haven: Yale Univ. Press, 2004) 302–4.

Modern Orthodoxy – that had emerged in the early twentieth century.⁸⁵ In his estimation, they all accommodated to local cultural and intellectual norms as a price for social acceptance. Authentic Judaism would develop in America, he argued, only if a core population separated itself physically from society and its members concentrated on enriching their own Jewish knowledge and commitment.⁸⁶ The key to achieving this goal was to establish *yeshivot* and, even more so, kollels – institutions where married men receive a regular stipend in return for dedicating themselves exclusively to Talmud study.⁸⁷ He claimed that the young scholar who secluded himself in pursuit of Torah knowledge was not only growing intellectually and spiritually, but that this very feat was making a critical contribution to the welfare of the Jewish people. As such any activities that distracted him from this pursuit were to be discouraged.⁸⁸

R. Kotler was especially appalled that American Orthodox rabbis sat together with Reform and Conservative colleagues in organizations such as the Synagogue Council of America and the New York Board of Rabbis. By 1956 he had sufficiently consolidated his leadership to lead a move by the מועצת גדולי התורה, Agudath Israel's governing Council of Torah Sages, to ban Orthodox participation in such interdenominational frameworks. Although this position was not supported by some prominent figures within the Modern Orthodox camp, eventually R. Kotler's policy was adopted in practice by the vast

85 For distinctions between modern (sometimes referred to as centrist) and *haredi* (also referred to as traditionalist, *yeshivah*-world, right-wing, ultra-, and fervent) American Jewish Orthodoxy, see, for example: Jeffrey S. Gurock, "Resisters and Accommodators: Varieties of Orthodox Rabbis in America, 1886–1983," *American Jewish Archives* 35, 2 (Nov. 1983) 100–187; Jeffrey S. Gurock, *Orthodox Jews in America* (Bloomington, Ind.: Indiana Univ. Press, 2009); Charles S. Liebman, "A Sociological Analysis of Contemporary Orthodoxy," *Judaism* 18, 8 (Summer 1964) 295–98; Liebman, "Orthodoxy in American Jewish Life"; Samuel C. Heilman, "The Many Faces of Orthodoxy (part 2)," *Modern Judaism* 8 (1982) 171–98; Samuel C. Heilman, *Sliding to the Right: The Contest for the Future of American Orthodoxy* (Berkeley and Los Angeles: Univ. of California Press, 2006) 1–61; Chaim I. Waxman, "From Institutional Decay to Primary Day: American Orthodox Jewry Since World War II," *American Jewish History* 91 (2003) 405–21; Chaim I. Waxman, "Needed – New Typologies: The Complexity of American Orthodoxy in the 21st Century," in Stuart Cohen and Bernard Susser, eds., *Ambivalent Jew – Charles S. Liebman: In Memoriam* (New York: Jewish Theological Seminary, 2007) 107–24, 135–56.

86 There were additional factors that drove him to establish his *yeshivah*, notably his desire to "recreate" on American soil the Lithuanian Torah academies that had been destroyed during the Holocaust.

87 See: Hasia R. Diner, *The Jews of the United States* (Berkeley and Los Angeles: Univ. of California Press, 2004) 257–58; Yaakov Yosef Reinman, "Remembering Reb Shneur Kotler," in Nisson Wolpin, ed., *The Torah Profile* (Brooklyn: Artscroll/Mesorah Press, 1988) 236. On the history of the kollel, see: Bomzer, *The Kolel in America*; Mordechai Breuer, תבייתה הישיבה, אהלי תורה: תולדותיה (Jerusalem: Merkaz Shazar, 2004) 28, 149; Shaul Stampfer, הישיבה הליטאית בהתהוותה (Jerusalem: Merkaz Shazar, 2005) 360–82.

88 Finkelman, "Religion and Public Life," 118–20, 142–47; Helmreich, 43–44, 284.

majority of Orthodox rabbis.⁸⁹ Indeed, in 1994 the Synagogue Council of America officially folded.⁹⁰

These directives were complemented by legal decisions of other formidable Eastern European-born Orthodox authorities.⁹¹ Such strictures and statements set the standards for Orthodox policy regarding interaction with non-Orthodox public bodies throughout most of the twentieth century.⁹² Clearly they expressed the fear of encroachment from the directions of the Reform and Conservative denominations that was acutely felt during the 1950s by these captains of American Orthodoxy.⁹³ The level of insecurity was so great that even opportunities for influencing non-Orthodox Jews were in many cases to be abandoned, lest the exposure might lead the Orthodox to become attracted to the religious views of their adversaries. To be sure, there were always voices of dissent within Modern Orthodoxy that took a less militant stand on cooperation with the Reform and Conservative movements.⁹⁴ Yet the so-called “move to the right” or “haredization” of Modern Orthodoxy that began in the 1960s, was manifested, among other things, in its increasingly toeing the *haredi* line insofar as interdenominational issues were concerned.⁹⁵

89 Liebman, “Orthodoxy in American Jewish Life,” 52.

90 See: Louis Bernstein, *Challenge and Mission: The Emergence of the English Speaking Orthodox Rabbinate* (New York: Shengold, 1982) 141–56; Sarna, *American Judaism*, 303.

91 See, for example: Moses Feinstein, *אגרות משה: יורה דעה א* (New York: M. Feinstein, 1960) #139; Joseph B. Soloveitchik, “Message to a Rabbinic Convention,” in Baruch Litvin, ed., *The Sanctity of the Synagogue* (New York: Spero Foundation, 1959) 110–11. The following discussions relate, among others, to these legal rulings: Seth Farber, “Reproach, Recognition and Respect: Rabbi Joseph B. Soloveitchik’s Mid-Century Attitude Toward Non-Orthodox Denominations,” *American Jewish History* 89, 2 (2001) 193–214; Ilan Fuchs, “בין איש לאישה הכל לפי מעשה שהוא עושה: יחסם של שלושה פוסקים אמריקאים אורתודוקסים לסוגיית תלמוד תורה כך רוח הקודש שורה עליה: יחסם של שלושה פוסקים אמריקאים אורתודוקסים לסוגיית תלמוד תורה במחצית המאה השנייה של המאה העשרים” (M.A. thesis; Ramat-Gan: Bar-Ilan Univ. 2003) 55–57; Yael Levine, “התנועה הקונסרבטיבית כפי שמשקפת בחיבוריה של הרב משה פיינשטיין,” in Yitzhak Raphael, ed., *ספר אביעד* (Jerusalem: Mossad ha-Rav Kook, 1986) 281–93; Ira Robinson, “Because of Our Many Sins: The Contemporary World as Reflected in the Responsa of Moses Feinstein,” *Judaism* 35, 1 (Winter 1986) 40–41; Jonathan Sarna, “The Debate over Mixed Seating in the American Synagogue,” in Jack Wertheimer, ed., *The American Synagogue: A Sanctuary Transformed* (Hanover and London: Brandeis/Univ. Press of New England, 1987) 363–94.

92 Regarding specific members of non-Orthodox congregations, already in the nineteenth century efforts had been made to distinguish between individuals and institutions. See Ferziger, *Exclusion and Hierarchy*, 90–133.

93 Jenna S. Joselit, *New York’s Jewish Jews: The Orthodox Community in the Interwar Years* (Bloomington and Indianapolis: Indiana Univ. Press, 1990) 81–82.

94 See: Liebman, “Orthodoxy in American Jewish Life,” 49; David Singer, “Debating Modern Orthodoxy at Yeshiva College: The Greenberg–Lichtenstein Exchange,” *Modern Judaism* 26, 2 (2006) 117.

95 On the move to the right of the Modern Orthodox in the mid- to late twentieth century, and the blurring of the distinctions between the two streams, see, for example: Heilman, *Sliding to the Right*; Liebman, “Orthodoxy in American Jewish Life,” 53–54; Chaim I. Waxman, “The Hared-

That said, since the 1990s American *haredi* Jewry has shown increasing willingness to interface with its non-Orthodox and nonobservant compatriots. These efforts have manifested themselves, as I have demonstrated in a number of studies, in the emergence of new institutions such as rabbinical training programs and community-outreach kollels that are dedicated to creating opportunities for American Jews of all lifestyles and ideological orientations to gain exposure to Jewish heritage.⁹⁶ These initiatives have received the blessings of leading authorities and have been nourished by the public pronouncements of prominent rabbis that highlight the need to reevaluate previous policies.⁹⁷

There are numerous motivations that have led to this change. These include a growing sense of Orthodox “triumphalism” resulting from their success at countering post-World War II predictions of their demise and not only surviving but thriving on American soil.⁹⁸ This Orthodox phenomenon reached fruition simultaneously with rising alarm over sharp rises in rates of intermarriage and lack of affiliation among the majority of American Jews.⁹⁹ The expansion of

ization of American Orthodox Jewry,” in Mark Ami-El, ed., *Jerusalem Letter/Viewpoints* 376, Jerusalem Center for Public Affairs (February 15, 1998), <http://www.jcpa.org/cjc/jl-376-waxman.htm/>, July 1, 2010; Waxman, “From Institutional Decay to Primary Day,” 415–18.

- 96 See: Adam S. Ferziger, *Training American Orthodox Rabbis to Play a Role in Confronting Assimilation: Programs, Methodologies and Directions* – Rappaport Center for Assimilation Research – Research and Position Paper 4 (Ramat-Gan: Rappaport Center, 2003); Adam S. Ferziger, “Between Outreach and ‘Inreach’: Redrawing the Lines of the American Orthodox Rabbinate,” *Modern Judaism* 25, 3 (2005) 237–63; Adam S. Ferziger, *The Emergence of the Community Kollel: A New Model for Addressing Assimilation* – Rappaport Center for Assimilation Research and Position Paper 13 (Ramat-Gan: Rappaport Center, 2006); Adam S. Ferziger, “Church/Sect Theory and American Orthodoxy Reconsidered,” in Stuart Cohen and Bernard Susser, eds., *Ambivalent Jew – Charles S. Liebman: In Memoriam* (New York: Jewish Theological Seminary, 2007) 107–24; Adam S. Ferziger, “From Lubavitch to Lakewood: The Chabadization of American Orthodoxy,” in Naftali Loewenthal, Lawrence H. Schiffman, and Elliott R. Wolfson, eds., *Reaching for the Infinite: The Lubavitcher Rebbe – Life, Teachings and Impact* (Bloomington, Ind.: Indiana Univ. Press, forthcoming).
- 97 See, for example, Yaakov Perlow, “The following thoughts have been percolating in my mind the past few weeks. To some they may seem novel; to some, even questionable. But to me they reflect an unquestionable reality. I am thus sharing my personal thinking with the readership of *The Jewish Observer*,” *Jewish Observer* 32, 6 (June 1999) 40; authored anonymously, “Novominsker Rebbe Emerges as New Sage of Aguda: Perlow Assumes Mantle of Sherer as Movement Seeks to Improve Relations with Secular Jewry,” *The Jewish Press* (Dec. 4th, 1998); Nisson Wolpin, “Surprising Settings, Yearning Souls: A Search for the Spiritual at Federation’s General Assembly, In Pursuit of Torah Within the Ranks of Reform,” *Jewish Observer* 28, 10 (Jan 1996) 9–10.
- 98 See: Samuel I. Freedman, *Jew vs. Jew: The Struggle for the Soul of American Jewry* (New York: Simon and Schuster, 2000) 338–43; Jonathan Sarna, “The Future of American Orthodoxy,” *Shma.com* (February, 2001) <http://www.bjpa.org/Publications/downloadPublication.cfm?PublicationID=2336/>, Feb. 2, 2010; Jack Wertheimer, *A People Divided: Judaism in Contemporary America* (New York: Basic Books, 1993) 118–23.
- 99 Sarna, *American Judaism*, 362–74.

haredi Orthodoxy and its *yeshivot* has also created a glut of graduates who lack rigorous secular education and are mainly inclined and qualified to function as religious teachers or facilitators. The growth of outreach to the non-Orthodox has spawned a new industry in which these skill sets have marketable value.

Notwithstanding, a fundamental reevaluation has been set into play regarding the nature of American *haredi* Orthodoxy's approach to the broader Jewish population that has manifested itself in policies and activities that traverse formerly strict boundaries. Orthodox leaders have increasingly shed the insecurity that underscored their post-World War II survivalist policies. This new stance, in turn, allows for and encourages positive interactions with other Jews and their institutions – sometimes even when it entails entering their ideological adversary's territory – without the vigilance and defensiveness that previously characterized interdenominational encounters.¹⁰⁰

It bears note that the compromise of significant and long-held Orthodox taboos – most prominently by the heirs to those who established the prior standards – has also generated a good deal of internal criticism. After decades of indoctrination regarding the imminent dangers that awaited those who crossed interdenominational boundaries, the idea of exposing the *haredi* world's soldiers to the environments of their former enemies remains controversial.¹⁰¹

Thus, in viewing recent American *haredi* Orthodox developments in light of the turn-of-the-century paradigm, it is clear that the survivalist approach has by no means disappeared. Yet unlike the Hungarian example, a fresh mode of behavior has emerged that bears resemblance to the unsuccessful efforts of Rashban to facilitate a reevaluation of the zealous stance that had grown to dominate Orthodox discourse during his career. Recall the exhortation of Rashban in 1888, “If God-fearing judges, teachers and ritual slaughterers are not sent to the Congress communities . . . in this two wrongs will have been done: one, that we are placing stumbling blocks before them, two, via them we will also encounter these same problems.”¹⁰² To a certain degree, then, the contemporary American heirs to survivalist Orthodoxy have actually re-engaged Rashban's seemingly forgotten legacy.

In 1944 George Orwell lamented that more and more “history is written by the winners” and as such exclusively from their perspective.¹⁰³ No doubt this has often been true in regard to the history of nations in general and that of the Jewish people in particular. The case of R. Shlomoh Zvi Schück suggests that

100 See Adam S. Ferziger, “From Demonic Deviant to Drowning Brother: Reform in the Eyes of American Orthodoxy,” *Jewish Social Studies* [New Series] 15, 3 (Spring/Summer 2009) 56–88.

101 See Marvin Schick, “An Essay on Contemporary Jewish Life,” *Tradition* 35, 2 (2001) 14–35.

102 Schück, אבן העזר, #33 [29b].

103 George Orwell, “As I Please,” *Tribune* (Feb. 4, 1944) http://www.resort.com/~prime8/Orwell/02_04_44.html/, Feb. 2, 2010.

unique insights regarding Jewish life of both the past and the present can be garnered by devoting efforts to exploring the road not taken.

Professors Moshe Rosman, Daniel Sperber, and Kenneth Stow read and offered instructive observations on a very early draft of this article. I thank them for their efforts. I am indebted to the two anonymous readers as well as the editor for their edifying and illuminating comments on my original submission and suggestions for improvements. My initial exploration of the life and writings of Rabbi Shlomoh Zvi Schück took place during the preparation of my Master's thesis, Adam S. Ferziger, "A Moderate in a Sea of Extremes: The Responsa of Rabbi Salamon Zvi Schück," Yeshiva University, 1990, written under the guidance of Professor Jacob Katz, ז"ל, of the Hebrew University in Jerusalem. At the time, Professor Shnayer Z. Leiman offered key methodological suggestions that have been inculcated into the current article as well. It is never too late to recognize the value of such guidance from the initial stages of one's academic development.

Manuel Joel in Defense of the Talmud

Liberal Responses to Religious Antisemitism in Nineteenth-Century Germany

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In Germany, Jewish opposition against anti-talmudic literature was always noteworthy and sometimes even successful – but only towards the end of the nineteenth century were the Jews able to petition for their rights of religious literature before several courts of law. These courts, naturally, faced a serious dilemma, because the delicate question at the very heart of the cases was: Is slandering the Talmud equivalent to slandering Judaism? Being entirely unable to deal with this problem, the judges asked for Jewish expert witnesses, in general public figures of some scholarly caliber. The paper examines several Jewish expert opinions in their historical and theological context and pays special attention to the first of such testimonies delivered in 1877 by Dr. Manuel Joel, the liberal rabbi of the Breslau Jewish Community and a well-known scholar of medieval philosophy. It will be shown how those liberal rabbis and scholars defended the authority of the Talmud and how Orthodox circles reacted to their views, arriving finally at a deeper understanding of both the internal Jewish debates of the time and the Jewish struggle against religious antisemitism.

Controversies between Jews and Gentiles about rabbinic literature are as old as the Talmud itself.¹ The Oral Law of Judaism, as it was written down and discussed in the Talmud, seems to have caused suspicion among non-Jews and this suspicion produced a vast amount of anti-talmudic literature, written by anti-Semites throughout the centuries. Jewish opposition to this pamphlet-literature was always noteworthy and sometimes even successful,² but only towards the end of the nineteenth century were the Jews able to petition for their rights of religious literature before European courts of law. Jews in Western Europe were in a comparatively good position now: they shared almost all the civil rights of their Christian neighbors and even started thinking seriously that many of the

1 The *Yerushalmi* (*y.B. Qam.* 19b) relates how two representatives of the Roman government once came to Rabban Gamliel and demanded to learn Torah. At the end of the course they praised the Jewish law as pleasing – with a few notable exceptions. One of these was the tradition allowing Jews to steal from Gentiles while stealing from fellow Jews was forbidden. As soon as he heard this, continues the text, Rabban Gamliel ruled that stealing from Gentiles is also forbidden – because it would mean a desecration of the name of God.

2 As in the case of the suppression of Johann Eisenmenger's two volumes of *Endecktes Judentum* (Frankfurt a.M., 1700).

old talmudic teachings, laws and traditions should be changed to meet the new challenges of modernity – in terms of technology as well as politics. Jews could hold political office; they established industries, and dealt successfully in areas of finance. It was in these prosperous years that the Talmud became the subject of several lawsuits, and this time the Jews themselves were the initiators of the trials: Jewish organizations now began to bring to the Gentile courts accusations of incitement against Judaism and slander of its sacred literature. The occasion was the publication of two books, written in 1871 and in 1883 by notorious Jew-haters, one about the *Shulḥan ʿarukh* and one about the Talmud itself.

In 1871 August Rohling, professor of Catholic theology in Prague, published his *Der Talmudjude*, an anti-Jewish pamphlet that enjoyed wide popularity among German readers and saw five editions before 1880.³ In 1883, a friend of Rohling, the converted Jew Aron Briman, under the pseudonym of Dr. Justus, published a book called *Judenspiegel*,⁴ attacking the *Shulḥan ʿarukh*, a four-volume codex of Jewish law based primarily on talmudic rulings compiled in the sixteenth century. This book by Briman was also reprinted many times, and extracts from both works were published by several newspapers throughout Germany and Austria. On Jewish initiative, public prosecutors now sued the editors of those newspapers and made use of the new Criminal Code of the German Reich from 1876, especially of Articles 130 (incitement to class riot) and 166 (slander of sacred practice and heritage of a corporate religious body).⁵

The courts, naturally, faced a serious dilemma. Not only had they now to decide the difficult question of whether Judaism was a religion or a nationality, but more interesting in our context is that the courts were to deal with the Talmud itself – without benefit of a German translation or any knowledge of Hebrew and Aramaic – a vast body of rabbinic literature, barely comprehensible without many years of studying its methodology and way of thinking. But the question at the very heart of the cases was this: is slandering the Talmud equivalent to slandering Judaism? And, in this context, is the Talmud or the *Shulḥan ʿarukh* still of binding authority for the majority of Jews? Being completely incapable of dealing with these problems, the judges called for expert witnesses, often Jewish, but sometimes also the few Christian Orientalists of the time. As for the Jewish experts, it seems that the courts in general requested the opinion of public figures of some scholarly caliber: in 1877, in the first court-case against the Rohling book, a court in Silesia asked the opinion of Dr. Manuel

3 August Rohling, *Der Talmudjude* (Münster: Russell, 1871). By 1922, 17 editions were already sold. Of the sixth edition, 38,000 copies were distributed for free.

4 Aron Briman (Dr. Justus, pseud.), *Judenspiegel* (Paderborn: Bonifacius, 1883).

5 Only in 1882 did the German Imperial Court recognize Judaism as an incorporated religious community, protected by Art. 166. It took until the turn of the century until lower German courts decided according to this ruling and convicted inciters against Judaism to prison terms. Cf. Ismar Schorsch, *Jewish Reactions to German Anti-Semitism* (New York: Columbia Univ. Press, 1972) 124.

Joel, rabbi of the large Breslau Jewish Community and a well-known scholar of medieval philosophy.⁶ In 1888 a court in Marburg engaged a Jewish professor of philosophy at the local university and a student of Joel's — Hermann Cohen.⁷

In Vienna, Rabbi Josef Samuel Bloch took a different route in order to initiate a court hearing about the Talmud. In 1882, police in Vienna dissolved a meeting of local craftsmen where an anti-Semitic rally was being held and the inciters were brought to trial. But the Austrian court later acquitted the accused after extracts of Rohling's book were read out to the jury, who, deeply impressed by the texts, delivered an unanimous verdict of not guilty. As a consequence of this and other such experiences, many public prosecutors now rejected Jewish appeals concerning slander of the Talmud. Thus, in June 1883, Rabbi Bloch published a series of articles against Rohling in the *Wiener Morgenpost*, a leading government-friendly daily paper that was read in all the offices of official Austria. In a very condescending tone he challenged Rohling, for example, to publicly translate and explain a single Hebrew line at random in order to prove his expertise on the Talmud in the first place. Rohling had no choice but to take Rabbi Bloch to court for disgracing his honor and thus initiating another trial with the Talmud as the main subject of the proceedings. In this case, the Vienna judges would not accept Jewish expert witnesses and, lacking real alternatives, turned to none other than Julius Wellhausen,⁸ secretary of the German *Morgenländische Gesellschaft* at the time. Wellhausen answered the court's request with the remarkable statement that experts on the Talmud, as the court

6 Manuel Joel (1837–90) was the role model of the German *Doktor-Rabbiner*. His reputation as a scholar is based on his many works in medieval philosophy and in homiletics. He was also editor of one of the most popular prayer books in nineteenth- and twentieth-century Germany. On Joel, see *Monatsschrift für Geschichte und Wissenschaft des Judentums* (MGWJ) 5 (1926) 305–55, an issue of the *Monatsschrift* dedicated to his 100th birthday, and Görgé K. Hasselhoff, "Philosophie und Rabbinat: Manuel Joel," in Görgé K. Hasselhoff and Michael Meyer-Blanck, eds., *Religion und Rationalität* (Würzburg: Ergon, 2008).

7 About the history of this trial see Ulrich Sieg, "Der Wissenschaft und dem Leben tut dasselbe not: Ehrfurcht vor der Wahrheit — Hermann Cohens Gutachten im Marburger Antisemitismusprozess 1888," in Reinhard Brandt and Franz Orlik, eds., *Philosophisches Denken, politisches Wirken: Hermann-Cohen-Kolloquium Marburg 1992*, Philosophische Texte und Studien 35 (Hildesheim: G. Olms Verlag, 1993) 222–49.

8 Julius Wellhausen (1844–1918), a Protestant theologian, was head of an influential school of scholars claiming that the Bible had little historical value and was but an invention of later periods. As his results are based on a textual analysis of Scripture alone, many of his theories were later weakened by the great archeological discoveries in the Middle East at the beginning of the twentieth century. For the established Orthodox Judaism of that time, Wellhausen was viewed of as a great danger and provoked many apologetic reactions. Most popular was David Z. Hoffmann's brochure "Die wichtigsten Instanzen gegen die Graf-Wellhausensche Hypothese" (Berlin: Itzkowski, 1902). (On Hoffmann, see n. 17). Liberal scholars like David Neumark, Hermann Cohen or Max Wiener tended to approved of the results of biblical criticism, but strongly criticized its Christian bias.

required, were to be found only among the Jews themselves.⁹ Nevertheless, he presented a list of candidates, all of them German professors of Oriental studies or the Old Testament. Among them were known anti-Semites like Johann Gildemeister from Bonn, who would later play a role in the defense of the *Judenspiegel* by Briman, and Paul de Lagarde, who gave the expert opinion on the side of the defendant in the Marburg trial where Hermann Cohen was his antagonist. Also on Wellhausen's list was Franz Delitzsch from Leipzig, a Lutheran professor of Old Testament, although he was not accepted by the court since he himself had published a book against Rohling. German Jewry of all camps held Delitzsch in high esteem for that action, even though he was actually a zealous missionary.¹⁰

From a legal point of view, the situation for Rabbi Bloch was very disadvantageous. Although he had succeeded in taking Rohling to court, the burden of proof for his claim that Rohling's book was essentially wrong was entirely on him. For this reason, Bloch's legal representative, the Gentile lawyer Josef Kopp, asked the court for at least one year in order to collect source material and find the appropriate experts.¹¹ In the meantime, Briman's pamphlet *Judenspiegel* engendered two interesting trials in Germany. In 1883, the *Westphälische Merkur* in Münster published extracts from the book accompanied by an anti-Semitic editorial. Brought to trial by public prosecution, the editor of the paper engaged a certain Dr. Ecker, a private lecturer and Catholic priest, who had no knowledge whatsoever of the subject under discussion: the *Shulḥan ʿarukh*. Ecker secretly had Briman himself writing the expert opinion for him, which made Briman in a way defendant and defender in one person. But much more influential was the second trial concerning the *Judenspiegel*. In June, 1884, an anti-Semitic brush manufacturer from Bonn had published a cheap rhymed version of the Briman pamphlet and was taken to court for it by the public prosecutor.¹² The *Bonner Generalanzeiger* reported from the courtroom that the public reading of

9 Interestingly, it seems that nothing had changed from 1509, when Johannes Reuchlin wrote in his famous expert opinion about Jewish religious literature that in his lifetime there has never been a German "who could either understand or read" the Talmud. Cf. Johannes Reuchlin, *Recommendation Whether to Confiscate, Destroy and Burn All Jewish Books*, ed. and trans. Peter Wortsman (New York: Paulist Press, 2000) 66. The Wellhausen letter and many other documents about the Bloch-Rohling dispute are published in Isak A. Hellwing *Der konfessionelle Antisemitismus im 19. Jahrhundert in Österreich* (Wien: Herder 1972).

10 Franz Delitzsch, *Rohlings Talmudjude* (Leipzig: Dörffling & Franke, 1881). Delitzsch's son Friedrich, on the other hand, became German Jewry's public enemy for his influential "Bibel und Babel" lectures in Berlin (1902–3) where he claimed that large parts of the Pentateuch were no more than a product of the older Babylonian culture.

11 Kopp later published a book about the history of the trial and Rabbi Bloch's defense strategy. See Josef Kopp, *Zur Judenfrage nach den Akten des Prozesses Rohling-Bloch* (Leipzig: Verlag von Julius Klinkhardt, 1886).

12 About the trial itself see *Allgemeine Zeitung des Judentums (AZJ)* 25 and 26 (1884) 394 and 415.

the awkward poem caused much hilarity and that the appearance of Professor Johann Gildemeister from the local university, a specialist in Oriental languages, to give the expert opinion in defense of the manufacturer, was rather strange against that background. Gildemeister, who later published the text of his statement in court as a book,¹³ claimed that most of the quotations in the poem could indeed be found in the *Shulḥan ʿarukh*. The public prosecutor, though, in his final pleading, called Gildemeister's opinion irrelevant. If such quotations indeed exist, he said, they must have been written centuries ago when the Jews were bitterly persecuted and had no choice but to defend themselves. The German Jews of today, he continued, live in a modern state with laws defending them and it would be absurd to assume that they feel bound by those old regulations. On the other hand, a pamphlet like the one in question would very likely cause this same old hatred because it attempts to discredit an entire class of people. Those tendencies need to be stopped, argued the prosecutor, in order to prevent the sad consequences of anti-Semitism in Germany, as they had appeared lately in Russia.¹⁴ Gildemeister's book nevertheless provoked many angry reactions from the Jewish side. His arguments were discussed in detail in several books, among them Manuel Joel's second work in defense of Judaism, *Gegen Gildemeister*,¹⁵ and a learned work by a leading orthodox Rabbi from Berlin, David Z. Hoffmann,¹⁶ that contained, in addition to the refutation of Gildemeister's claims, a true *Judenspiegel*: nineteen chapters with 108 articles of Jewish law concerning Jewish-Gentile relations.¹⁷

In the same year in Vienna almost all experts from Wellhausen's list refused to give their opinion on Rohling's book. Gustav Bickell¹⁸ from the University

13 Johann Gildemeister, *Der Shulchan Aruch und was daran hängt: Ein gerichtliches Gutachten* (Bonn: P. Neusser, 1884). This book, too, went through several editions in 1893, 1921 and 1923.

14 *Bonner Generalanzeiger*, June 8, 1884.

15 Manuel Joel, *Gegen Gildemeister* (Breslau: Verlag von G. Schottlaender, 1884). Another book against Gildemeister was written by a rabbi from Koblenz, Dr. Adolf Lewin, *Der Judenspiegel des Dr. Justus ins Licht der Wahrheit gerückt* (Magdeburg: Wolff, 1884).

16 David Hoffmann, *Der Shulchan Aruch und die Rabbinen über das Verhältnis der Juden zu den Andersgläubigen* (Berlin: Verlag der Expedition der "Jüdischen Presse," 1885). Hoffmann (1843–1921) studied with Hildesheimer in Eisenstadt, later at the Universities of Berlin and Vienna, and took his doctor's degree in philosophy. He taught at the Hirsch School in Frankfurt before he joined the faculty of the Berlin Rabbinical Seminary in 1873 where he became rector after the death of Hildesheimer in 1899. At about this time Hoffmann was already a leading halakhic authority for German orthodoxy.

17 Hoffmann's codex was subsequently criticized by the Protestant theologian Gustaf Dalman. Assuming an allegedly neutral position between the Jew and the anti-Semite, Dalman wrote in 1886 that Hoffmann's true *Judenspiegel* was as dishonest as the version from Briman. For a full discussion of the debate between Hoffmann and Dalman, see Christian Wiese's landmark study *Challenging Colonial Discourse: Jewish Studies and Protestant Theology in Wilhelmine Germany* (Leiden: Brill, 2005) 112–22.

18 Bickell (1838–1906) converted to Catholicism after he thought he had found a clear testimony in

of Innsbruck even wrote to the court that Rohling was a close friend of his for almost 20 years and that it would be exceedingly unpleasant for him to give evidence *against* Rohling, as he very likely would have been forced to do. In addition, Bickell wrote, he had studied the Talmud more than Christian orientalist usually considered necessary, but still saw himself a beginner and student on this subject – and old-fashioned as he was, Bickell concluded, he would only claim to be an authority when his true field of expertise was concerned.¹⁹ The only orientalist from the list who agreed to give an opinion was Theodor Nöldecke from Strasburg. Later he was joined by August Wünsche from Dresden, a former student of Franz Delitzsch. The document that both specialists prepared for the courts refuted Rohling's accusations on almost all counts.

But in the end, the court hearings never took place. Rabbi Bloch had already amassed over 1000 pages of material to prove his point, when Rohling chose the lesser evil and in November, 1885, a few days before the actual trial was to begin, abandoned the lawsuit and discontinued his legal action against Bloch. Still, it was a stinging defeat for Rohling's reputation from which he would never fully recover. In the same year, Rohling's friend Briman was sentenced to several months in prison by another Austrian court for perjury and falsification of documents.

The case in Marburg, a stronghold of anti-Semitism, also was won. In 1886, Ferdinand Fenner, a local elementary school teacher who had only recently joined the anti-Semitic movement led by the Marburg local patriot Otto Böckel, made some unguarded comments about the Talmud during his first public appearance at a convention of the movement. The Jewish community had placed a paid stenographer in the audience and convinced the public prosecutor on the basis of this evidence to indict Fenner. The actual hearing took place only two years later in 1888 but caused widespread interest all over Germany, probably because of the two well-known authorities who were to give evidence for the parties: Hermann Cohen and Paul de Lagarde. Cohen appeared personally in the courtroom and even exposed himself to the cross-examination of Fenner's defense lawyer who ironically confronted Cohen with the claim that anti-Semitism can by no means be called deplorable or a phenomenon of lack of education and moral barbarism, as several quotes from Herder, Kant and Fichte would prove convincingly. Although the plea of the prosecution was

favor of the Immaculate Conception in the hymns of Ephrem the Syrian, which he was transcribing in London. He was ordained priest in 1865 and taught archeology and Semitic languages in Innsbruck.

19 This last sentence is connected to a reference to Ecker, whose pretensions were known to him. Bickell writes that Ecker published the book written by Briman under his own name in order to become professor. The letter is published in Kopp, *Zur Judenfrage*, 25.

again a document of eloquent humanism²⁰ and Fenner was sentenced to a jail term of two weeks, Cohen was very much appalled by the trial, probably first and foremost by the open hatred expressed in the expert opinion of his fellow scholar, de Lagarde, on whose vitriolic anti-Semitism Cohen would not deign to comment.²¹

That these trials became possible at all, regardless of their outcome, was a great achievement for the cause of Jewish emancipation, and points to an enlightened atmosphere in the Germany of the Kaiser. The accused in the Bonn trial, for example, spent a good deal of time and effort in locating a German printer who was willing to print his anti-Semitic poem. The one he finally found (and who was subsequently taken to trial with him) turned a blind eye to the content of the book. Well known also is the Berlin *Notabeln-Erklärung* from 1880, where 75 non-Jewish personalities protested the return of anti-Semitism in the context of the debate about an anti-Jewish article by the historian Heinrich von Treitschke.²²

On the Jewish side, the need for public commitment was also felt. In 1884 an assembly of 68 liberal rabbis passed a declaration stating that according to their understanding, the “neighbor” in the verse *Thou shall love thy neighbor as thyself* (Lev 19:18) was in no way limited to Jews.²³ In 1889 a similar declaration of “The Basic Principles of Jewish Ethics” was adopted by 177 German rabbis, this time including the Orthodox, represented by Esriel Hildesheimer.

On the other hand, there was still a long way to go in establishing equality for the Jews, especially in academia. One might wonder today about the respect with which Gildemeister and de Lagarde were treated by their Jewish colleagues, given not only the low scholarly quality of their contribution to the trials but also the “stubborn ignorance” on the side of the Christians of Jewish scholars’ achievements, as David Kaufmann once put it.²⁴ *Wissenschaft des Judentums*

20 Printed in part in “Eine Anklage wegen Beschimpfung der jüdischen Religion,” *Jüdische Presse (JP)* 19 (1888) 164–65. “A man should be judged by his deeds and not by his descent,” the prosecutor said. “The Jews have the right to demand the protection of their citizenship and their religion . . . and nobody has the right to treat them like foreigners because their belief is different from ours.”

21 Lagarde, whose opinion was never published, wrote for example that “with no exception everything that is of any worth to humanity was written by non-Jews” and that the Jews were like a plague to the Germans. Quoted after Sieg, *Der Wissenschaft und dem Leben*, 234.

22 See here George Y. Kohler, “German Spirit and Holy Ghost – Treitschke’s Call for Conversion of German Jewry: The Debate Revisited,” *Modern Judaism* 30:2 (2010) 172–95.

23 The declaration is published in “Aus der fünften deutschen Rabbinerversammlung,” *AZJ* 23 (1884) 360–63. Orthodox rabbis were invited to the assembly but refused to come. Hildesheimer sent an open letter that was read to the audience at the meeting, see *AZJ* 26 (1884) 405–7.

24 David Kaufmann, “Die Wissenschaft des Judentums,” *AZJ* 14 (1891) 161–63. Kaufmann (1852–99) was one of the leading scholars of the *Wissenschaft des Judentums*, teaching at the rabbinical seminary in Budapest. He was also a famous art and manuscript collector.

was still confined to the rabbinical seminaries: there was no chair of Judaism at German universities, and the main sources for Gentiles on the Talmud were still the prejudiced Christian Hebraists of the sixteenth and seventeenth centuries.

Modern scholarly literature has taken no real interest in the actual arguments exchanged between Rohling and his Jewish opponents. This is basically because the many researchers of nineteenth-century anti-Semitism assumed that Rohling and Briman were nothing but arch-liars, falsifiers and inciters, driven in their claims only by their irrational enmity against the Jews — and this is undoubtedly true. But it is also true that the Talmud contains many unfavorable sayings about Gentiles in general, that some of its property laws seem to discriminate against non-Jews,²⁵ and that many business transactions with Gentiles are forbidden to Jews.²⁶ Thus, it might be interesting to analyze how the Jewish defenders of the Talmud reacted to Rohling and the like, not so much on subjects where the anti-Semites deliberately falsified or mistranslated, but rather on real instances of defamatory passages against non-Jews as they occur in the Talmud. I will focus on the first expert opinion delivered by Manuel Joel to the Royal Court in 1877,²⁷ but will consider other comparable documents as well, by the same or by different Jewish apologists. It will be demonstrated that Joel's strategy became the model for the later Jewish defenses of rabbinical literature, as in the case of Bloch and to a certain extent even that of Cohen.

August Rohling, in his *Talmudjude*, had made three basic claims that were to be answered by Joel; that

1. talmudic law was still the binding authority for Jews and legally even took precedence over Scripture,
2. that Christians are idolaters according to this law, and that
3. Christians were therefore subject to talmudic laws that discriminated against them.²⁸

There is a twofold point of interest in the analysis of Joel's defense against those accusations. First, he had to manage the difficult task of convincing the non-expert Christian judges of the truth of *his own* reading of the Talmud,

25 In general: Lost or erroneously transferred property does not have to be returned to the Gentile; damage caused by domestic animals need not be compensated for, according to the Talmud (*b.B. Qam.* 113b and others).

26 For this subject, cf. Gary G. Porton "Forbidden Transactions: Prohibited Commerce with Gentiles in Earliest Rabbinism" in Jacob Neusner and Ernest S. Frerichs, eds., *To See Ourselves As Others See Us* (Chico, Cal.: Scholars Press, 1985) 317–35.

27 Published as Manuel Joel, *Meine in Veranlassung eines Processes abgegebenen Gutachten über den Talmud* (Breslau: Schletter'sche Buchhandlung, 1877). All translations from the German are mine.

28 August Rohling, *Talmudjude* (6th ed.; Münster: Russell, 1877); for 1., cf. 35–39; for 2., 85–87; and for 3., 89–90.

because obviously he could do nothing other than quote talmudic passages not quoted by Rohling. But in addition, I would like to highlight another delicate aspect of Joel's task: Rabbi Joel, like all the defenders of the Talmud in German and Austrian courts,²⁹ was a representative of the new, non-Orthodox stream of Judaism that was called *Liberal Judaism*, and Reform Judaism by the Orthodox and traditional streams of Judaism which would soon find themselves in the minority as compared to this new movement, at least in urban Western Europe.

Clearly, the main point of contention between the old and new schools within Judaism on the theological level was the Oral Law and its interpretation, that is, the Talmud.³⁰ When viewed against this backdrop, the fact that the German court chose Manuel Joel to render an opinion on the legal authority of the Talmud posed a serious challenge to the intra-Jewish disputes at the time, while the judges were unaware of the conflict. When Joel published his two statements to the court soon after the trial, the pamphlet drew a harsh reaction from the Orthodox. One review of Joel's evidence in defense of Judaism, published by the leading Orthodox weekly *Der Israelit*, attacked the liberal rabbi viciously by claiming that Reform Judaism was to blame for the success of anti-Semites like Rohling.³¹

Indeed, on the first of Rohling's claims, (that the Talmud is still of binding authority), it seems Orthodoxy had more in common with Rohling than with Joel. Joel is attacked by the anonymous author of the review for his opening statements in the expert opinion: "Although Judaism has a certain feeling of appreciation for the ethical sayings and exegetical methods of the Talmudists, later rabbis always dealt freely with the teachings of the Talmud on those subjects."³² In the Orthodox rejection of this assessment, it appears that the Reform-Orthodox animosity is not so much directed to the question of whether talmudic law is today as binding as it was when written down, but much more about the doctrine of the divine origin of the Oral Law. What angers the *Israelit* most is Joel's description of the Talmud as "containing the doctrines and

29 Peter Pulzer, when relating the story of the Vienna trial, calls Samuel Bloch an "orthodox Rabbi just arrived from Galicia." See Michael A. Meyer, ed., *Deutsch-jüdische Geschichte in der Neuzeit* (4 vols.; München: C. H. Beck, 1997) 3:215. In fact, Bloch, like David Hoffmann, had studied at the *yeshivah* in Eisenstadt (Hungary) with Rabbi E. Hildesheimer but fell from grace with Hildesheimer because of a practical joke. Later Bloch studied philosophy at the Universities of Munich and Zurich and took up some positions as rabbi in Germany before he finally arrived in the Vienna working-class suburb of Floridsdorf. Cf. Josef Samuel Bloch, *Erinnerungen aus meinem Leben* (Wien: R. Löwit, 1922).

30 On the practical level it seems to have been the introduction of reforms into the synagogue service. See for this: David Ellenson, *Tradition in Transition* (Lanham: Univ. Press of America, 1989) 50–57.

31 "Wie ein Rabbiner den Talmud vertheidigt und die Talmudisten schmäht," *Der Israelit* 36 (1877) 867; no. 37, 889; and no. 38/39, 919.

32 Joel, *Gutachten*, 3.

opinions that cover a span of 1000 years, beginning with Ezra in 500 B.C.E. and including 1000 names of Sages that express their views. . . .”³³ This deliberate ignoring of the Talmud as being first and foremost the word of God, writes the *Israelit*, this replacing of the Oral Law with the *opinions and views* of mere mortals, not only demonstrates the religious bankruptcy of the Reform movement, it is also the reason why the whole trial was lost. How can one convince the court that Judaism was slandered by the defendant, so the argument runs, if the defender of Judaism himself does not believe in the authority of the Talmud – an authority that the Talmud received, after all, because of its divine origin?³⁴ But this fear was unfounded. In the Bonn trial the accused was convicted and sent to jail although the expert opinion came from Gildemeister. The public prosecutor there even argued the exact opposite: Whatever *is* in fact written in the Talmud, the accused must be convicted because modern Jews do not feel bound to the talmudic dicta against Gentiles. Also the case in which the ultra-liberal Hermann Cohen testified was won, although Cohen in his testimony always put quotation marks around the term *Gotteswort*.

Joel, who had not written the text for internal Jewish debate, was in fact in a much more difficult position. Not only did he have to explain to the court how modern halakhic decisions are based on talmudic rulings, but furthermore how those decisions could sometimes go beyond what the Talmud teaches when social conditions change. In other words, in order to win the libel case against the Talmud, he had to insist on its legal authority at least as a starting point for halakhic thinking. Yet in order to defend Judaism against Rohling’s attacks he had to stress how *halakhah* naturally developed away from the talmudic basis due to changed circumstances.

Thus, when talking about the *soferim*, Joel writes in a long note that “in them was the living custom (die lebendige Sitte) of Israel that is at least as old as the written law itself – on the other hand they further evolved (fortbilden) religious practice, created new laws and abolished outdated ones. Although deeply respectful of the biblical prophets, the *soferim* proudly held that a sage is more than a prophet. The *soferim* were not to interpret Scripture philologically: they wanted to make it applicable for future circumstances.”³⁵ As examples, Joel lists (among others) the Sages’ interpretation of *an eye for an eye* . . . (Lev 24:20) as

33 Joel, *Gutachten*, 3.

34 Mordechai Breuer still followed the same line of thinking when he wrote that “the way Reform rabbis defended the Talmud led to acquittals because they denied its legal authority for modern Jewry.” See his *Jüdische Orthodoxie im Deutschen Reich* (Frankfurt a.M.: Jüdischer Verlag, 1986) 307. Specifically the expert opinion of Joel is deemed “ambiguous” by Breuer and he further claims that “it was hardly to be expected from representatives of liberal Judaism to take up the cudgel for the Talmud.” In this study I wish to demonstrate that the opposite occurred.

35 Joel, *Gutachten*, 19, n. 1.

meaning only monetary compensation; the scriptural prohibition to light a fire on Shabbat and its opposite, the talmudic commandment to celebrate Shabbat with festive lights shining; Ezra's abolition of the tithe and Hillel's abolition of the law requiring that debts be cancelled every seven years – a law that Joel calls one of the finest biblical commandments.³⁶

Explicitly Joel writes that Judaism and the Bible are not the same, since a religion can never be described comprehensively in books. Therefore, the Written and Oral Law are of equal value, and since “the former is living and the latter receives life only from the spirit of the former, it cannot be denied that the Oral Law is the completion of the Written Law.”³⁷ In this sense, the great importance of the Talmud lies in preserving the traditions of a whole millennium. But this does not mean that all sayings by all Rabbis of the Talmud are of equal value, Joel adds here. Quite the contrary: sometimes the Talmud itself would speak with disregard about some teachers, telling us this one does not know Scripture but is a good storyteller, or that another is a halakhic expert but a poor aggadist.

In stating that *aggadah* is not of binding authority, Joel continues here an argument that Nachmanides had already made when pressed at the Barcelona trial in 1263. Even Orthodox Talmudists made the freest use of *aggadah* from the Middle Ages, Joel writes, referring obviously to Nachmanides – “men who would not transgress the smallest regulation in ritual and ceremony left the talmudic exegesis aside and interpreted Scripture according to their more progressive, scientific knowledge of the language.”³⁸ Rohling's side attack that the Jews would place the Talmud even above the Bible is countered by Joel, interestingly enough, by explaining the Jewish custom never to physically place a volume of Talmud on a *chumash* (Pentateuch), an argument that one would not necessarily expect from a liberal rabbi.

Hermann Cohen's opinion on the legal authority of the Talmud³⁹ is formulated more carefully than Joel's, although in fact he only strengthens the points made by Joel eleven years earlier. At the outset, Cohen divides the Jews of his time into two groups: the Orthodox (*die Buchstabengläubigen*), who consider the few talmudic laws that are still relevant today as binding, and the “believers

36 Joel, *Gutachten*, 19, n. 1.

37 Joel, *Gutachten*, 18.

38 Joel, *Gutachten*, 20.

39 Hermann Cohen, “Die Nächstenliebe im Talmud,” reprinted in *Jüdische Schriften* (3 vols.; Berlin: Schwetschke, 1924) 1:145–74. For an extensive discussion of the text see Michael Zank, “Hermann Cohen und die rabbinische Literatur,” in Stephane Moses and Hartwig Wiedebach, eds., *Hermann Cohen's Philosophy of Religion: International Conference in Jerusalem 1996* (Hildesheim: Olms, 1997) 263–91, here 272–76; and Dana Hollander, “Ethical-Political Universality Out of the Sources of Judaism: Reading Hermann Cohen's 1888 Affidavit In and Out of Context,” in Aaron W. Hughes and Elliot R. Wolfson, eds., *New Directions in Jewish Philosophy* (Bloomington: Indiana Univ. Press, 2009).

in the wider sense of the word” who would only accept the “content of the moral regulations” of the Talmud. Cohen, in answer to an explicit question of the court, states that for both groups at least insofar as the Talmud is concerned, slandering it and its moral standards amounts to slandering Judaism in general.⁴⁰ Furthermore, Cohen wisely divides talmudic sayings into *discussion* and *decision*, which allows him to write that the discussions sometimes contain “sentences of very personal insight and passion” as well as “dicta of a narrow-minded (*borniert*) and fanatical belief.” In every other form of literature such sayings would only be blamed on their author, Cohen continues. In the Talmud, however, the case is different: because of their proximity to true halakhic decisions, those personal sayings “accrue a kind of dubious validity.”⁴¹

Thus, while Cohen leaves the option for the Orthodox to support his testimony in court without advocating his own position, he leaves no doubt as to which of the two groups he personally belongs. Cohen begins his statement with a few lines of justification of why he is an appropriate expert witness for the prosecution. He devoted ten years of his youth to the study of the Talmud, he declares, but today he is reading the Talmud neither as a historian nor as a theologian, but as a philosopher.⁴² And while the historian analyzes ethical systems according to their *content* and the theologian according to religious dogma, the philosopher is only interested in the question of how these systems are deduced from a fundamental moral principle of reason. Therefore, the philosopher is probably the best expert when it comes to the validation of talmudic ethics, as the Royal Court requested.⁴³ This, of course, is a very radical position concerning the authority of the Talmud as divine law, much more radical than Joel’s. Whereas Joel, and for that matter the whole Positive-Historical school of Judaism, avoids a clear statement about the origin of the Oral Law,⁴⁴ the neo-Kantian philosopher Cohen situated its origins exclusively within the framework of human reason – strictly in the sense of an autonomous ethics according to Kant.⁴⁵ Mishnaic law, says Cohen, “has its sources in a time when the ‘word of God’ itself emerged or became canonical. [. . .] This law, even if it insists on be-

40 Cohen, “Nächstenliebe,” 151.

41 Cohen, “Nächstenliebe,” 155–56.

42 At the Rabbinical Seminary in Breslau Cohen had studied Talmud in the classes of Heinrich Graetz. This fact alone might account for an unconventional approach to the text. At the time when Cohen was a student in Breslau, Graetz was already in the middle of his epochal historical work which provoked heavy criticism from the Orthodox.

43 Cohen, “Nächstenliebe,” 146–47.

44 The general position being that it has existed from *time immemorial* (see n. 74).

45 In 1888, Cohen was still more than a decade before the publication of his own systematic ethics. But in his book on Kantian ethics from 1877 he had already developed its main feature: the re-introduction of God. The Kantian God was only a postulate, invented to fill a gap. For Cohen, God is the highest moral idea, the principle on which ethics are founded – but still, only an idea.

ing divine, has its natural origin in historical circumstances and is therefore (...) changeable.”⁴⁶

Nevertheless, the Orthodox reaction to Cohen's expert opinion for the court in Marburg was overall very favorable: Hirsch Hildesheimer, who had succeeded his father in 1883 as the editor of the *Jüdische Presse*, went personally to Marburg for the trial. In his report he praised not only Cohen's brave appearance in court but explicitly also his written statement.⁴⁷ In the name of all the lecturers in his Berlin Rabbinical Seminary Rabbi Esriel Hildesheimer, obviously briefed by his son, wrote an astonishing letter to Cohen even before the court announced its decision on May 2, 1888, and thus also before Cohen's text was officially published.⁴⁸ The letter expressed “respectful congratulations from a moved heart” on Cohen's text, which is of “brilliant clarity and unrelenting conscientiousness.” Although Hildesheimer hints between the lines that he does not agree with every word Cohen wrote, Hildesheimer thanks Cohen in the letter for “publicly bearing witness to the lofty religious and ethical teachings” of Judaism, the “much-maligned religion of our fathers.” In another article, the *Jüdische Presse* even went so far as to recommend and encourage the circulation of Cohen's “small masterpiece” among all Jews, especially because Cohen's religious standing “protects him against the accusation of being prejudiced.”⁴⁹

This treatment of Cohen, which is almost the opposite of what Joel had experienced in 1877, is certainly the result of a complex of reasons and cannot be explained by the content and tone of the respective court documents alone. Not only had eleven years passed between the two trials, years in which both the Orthodox as well as the liberal camp had learned to live with the existence of the other, but also the considerable split of German Orthodoxy and its press organs into a “provincial” Frankfurt and a more open-minded Berlin group must be taken into account here.⁵⁰

Concerning the second of Rohling's claims, that, according to the Talmud, the Christians are idolaters, Joel can already refer to what he had shown above: that the Talmud is only the basis for a long chain of legal decisions and not necessarily the state of the law to be followed today. The history of halakhic elaborations about Christianity, from talmudic times until the nineteenth century,

46 Cohen, “Nächstenliebe,” 153 and 156.

47 “Eine Anklage,” *JP* 17 (1888) 161–67. The paper already ran Hirsch Hildesheimer's coverage the day after the trial, due to its “great importance.” This was only possible because of the “unlimited use of the telegraph” throughout the night of April 25th, 1888 (167).

48 Cf. Mordechai Eliav, *Hildesheimer Briefe* (Jerusalem: R. Mass, 1965) letter 85. It was David Ellenson who brought my attention to this letter; see his *Continuity and Innovation: Esriel Hildesheimer and the Creation of Modern Jewish Orthodoxy* (Ann Arbor: Univ. of Mich. Press, 1987) 104–5.

49 “Das Gutachten des Herrn Professor Cohen,” *JP* 22 (1888) 213–15.

50 Cf. Breuer, *Jüdische Orthodoxie*, 170–78.

might be divided into a majority and a minority opinion, where the majority holds that at least born Christians are not idolaters.

The Talmud, in general, still seems reluctant to acknowledge that Christians are not Jews, writes Joel in his expert opinion, and quotes Eusebius who stated that the first fifteen Bishops of Jerusalem were circumcised Jews, keeping the law of Moses.⁵¹ The same argument is brought forward by Rabbi Hoffmann in his response to Gildemeister: the Talmud knows Christians only as Jewish heretics, not as a world religion that uprooted paganism.⁵² In addition, writes Hoffmann, the *tanna* Rabbi Eliezer ben Jacob is quoted in the Talmud⁵³ as relating that the Israelites in Temple times, on the last day of the Sukkot holiday, pronounced the formula: *God and you, altar, we honor*. How, asks the Talmud thereupon, could they associate the name of God with another entity? Is there not a *baraita* teaching that he that associates the name of God with another entity (*mešatef šem šamayim vedavar aḥer*) will be put to death? The answer is: what the Israelites really said was *God we worship, and the altar we honor*. . . . Thus, Hoffman declares, this passage was understood by all commentators to mean that there is a difference between idolatry on the one hand and the association (*šituf*) of worshiping the one God with the worship of other beings alongside God on the other; the latter being allowed for non-Jews, as long as they had the correct conception of the Deity.

Christians, according to Joel and Hoffmann, would thus fit the talmudic concept of the *Noachide*, non-Jews who voluntarily keep seven basic commandments, one of them being to refrain from idolatry.⁵⁴ *Sons of Noah* are not only entitled to all the civil rights of the Jewish code just as their Israelite neighbors are, they even *have a place in the world to come*,⁵⁵ according to the Rabbis. When Hermann Cohen wrote his expert opinion for the Marburg trial in 1888, he would not even start discussing all the single accusations of Rohling one by one, as Joel and the other expert witnesses did. For Cohen, the true philosopher, the mere existence of the concept of the *Noachide* contradicts all claims to the xenophobic nature of the rabbinic literature. The *Noachide*, according to Cohen, is not a believer but a citizen following ethical norms, and therefore a "singular fact in the history of religious politics, to be explained only by the power of the fundamental idea of monotheism"; it is the beginning of the idea of dividing state from religion.⁵⁶

51 Joel, *Gutachten*, 7. See Eusebius' *Church History*, Book IV, chap. 5.

52 Hoffmann, *Shulchan Aruch*, 141.

53 *b.Sukkah* 45a.

54 *b.ʿAbod. Zar.* 64a. The others being, 2. prohibition of blasphemy; 3. of murder; and 4. of incest; further 5. to honor the property of others; 6. the establishment of courts of justice; and 7. not to eat a limb torn from a living animal.

55 *b.Sanh.* 105a. Maimonides, *Mishneh Torah*, Laws of Kings and Wars 8:11.

56 Cohen, "Nächstenliebe," 159.

But while for Cohen Christianity is not idolatry *per se*, Rabbi Hoffmann belongs to the majority school with only one important reservation: Christianity is not idolatry *for Gentiles*. In his Hebrew responsa a case is found, for example, where he was asked if Jews can contribute money to the building of a Christian church.⁵⁷ Hoffman categorically forbids this for it would mean that Jews are contributing to a building that was for them a place of idolatry. No exceptions were to be made, not even for “maintaining the peace” (*mipnei darkei hashalom*), as the writer of the question suggested – a principle that plays a central role in Hoffmann’s own defense of the *Shulhan ‘arukh* against Gildemeister.⁵⁸ The crucial point for Hoffmann here is obviously that what is allowed for the Christian is still forbidden for the Jew. That this approach of his responsum is certainly radical can be seen from a different ruling of Hoffmann’s Orthodox contemporary, Rabbi Marcus Horowitz of Frankfurt, on the same matter. The Jews contribute to the *building*, argues Horowitz, not to the worshipping, and therefore it should be allowed.⁵⁹

Thus the dominant halakhic opinion of Joel’s time⁶⁰ was that Christianity was a form of monotheism, at least for the Christians, and he could rely on this when answering the attacks of Rohling. He divides the talmudic treatment of non-monotheists into three groups in a descending order of hostility: 1. the Jewish heretic who was theoretically excluded from the love of the community. (Joel stresses that in practice this did not always hold.) Since the Christian Gnostics were very often Jews by birth, Joel continues, “it is understandable why the name *minim* (heretics) was such a sad word for the Talmudists”;⁶¹ 2. the idolater, who would flagrantly worship idols, constitutes the second group for Joel. Some regulations exist referring only to them, but every assault on their lives or even their property was forbidden. Their poor had to be nourished and their sick to be visited by Israel – not because they deserved

57 David Z. Hoffmann, *Melamed leho’il* (Tel Aviv: n.p., 1976) no. 148,2 (Heb.).

58 Cf. Hoffmann, *Der Shulchan Aruch*, 36–44.

59 It is halakhically permissible to turn an unused church into a synagogue, says Horowitz – so it is not the building that carries the idolatry. Cf. Ellenson, *Tradition in Transition*, 152–54.

60 A modern representative of this tolerant approach to Christianity is Rabbi Haim David Halevi, the former Chief Rabbi of Tel Aviv. He would even identify a certain weakening of the Christian belief in the Trinity in our days when this concept is understood in a more abstract and allegorical way by many Christians. Cf. Haim D. Halevi, “Maintaining the Peace in the Relations between Jews and Non-Jews,” *Techumin* 9 (1988) 71–81. Others, following basically the opinion of Jacob Katz, have refuted this approach entirely and explained all arguments in that direction (including Hoffmann’s book) as due to apologetic needs. Instead of the talmudic, Toseftan and other halakhic proof (Rabbi Menachem Meiri in his commentary on *b.B.Qam.* 113b), a peculiar “Jewish instinct that Christianity is ‘*avodah zarah*’ is cited. Cf. David Berger, “Jacob Katz on Jews and Christians in the Middle Ages,” in Jay M. Harris, ed., *The Pride of Jacob* (Cambridge, Mass.: Harvard Univ. Press, 2002) 56.

61 Joel, *Gutachten*, 22.

it but in the interests of *maintaining the peace*. 3. the Noachide, who according to the Talmud, *has the right to all duties of the heart (Liebespflichten) the same as the Israelite*⁶² and a place in the world to come. And this is the group where the Christians belong, suggests Joel, although Rohling tried his best to place them somewhere between groups one and two, because even group two was still too positive in his opinion.

But even if Joel was following the majority opinion, a minority of rabbis still held Christianity to be idolatrous, and this tradition has Maimonides as its most prominent spokesman.⁶³ Both Gildemeister and Rohling identified this opinion as convenient for their purposes and tried to profit from it. Indeed, Maimonides ruled in his Laws of Idolatry that *shituf* is not allowed for the *Noachide*.⁶⁴ In the often censored *halakhah* 9:4 of the Laws of Idolatry, Maimonides leaves no doubt when he writes that the Christians⁶⁵ are idolaters, and that on Sundays, Jews in Israel are not allowed to do business with them because this is their holy day. Rohling moreover claims that later, in *halakhah* 10:1, "Jesus the Nazarene" is mentioned as one of the heretics (*minim*) who have to be put to death immediately and without trial, according to Maimonides. Joel did not find the name of Jesus mentioned at the indicated place in his edition, as he writes,⁶⁶ but had several of the first printed editions (from the fifteenth century) checked: there names were found but only those of Zaddok and Boethus.⁶⁷ Still Joel carefully refrains from blaming Rohling for inventing the Jesus-quote because he is convinced that for such an invention at least a minimal familiarity with the text would have been necessary on the side of Rohling. Therefore, he continues, somebody must have told Rohling that such a version exists, so that an old manuscript might exist somewhere that indeed bears the name of Jesus in this context. Joel's assumption was right. In fact, almost all manuscripts of the *Mishneh Torah* mention Jesus at this point, but Rohling himself had only copied that accusation, like many others, from Eisenmenger's *Endecktes Judentum*.⁶⁸

62 Joel, *Gutachten*, 22.

63 Other rabbinical sources of this line of thinking can be found in Hoffmann, *Der Shulchan Aruch*, 12. Maimonides, however, is often quoted by modern apologetic sources as holding that Christianity (and Islam) nevertheless paved the way for the coming of the Messiah (Laws of Kings and Wars 11:11). This passage, interestingly, was censored from the *Mishneh Torah* in the first printed editions.

64 Cohen seems not to be aware of this ruling; he probably used a censored version of the *Mishneh Torah*.

65 In printed versions "Edomites." Almost all manuscripts have here Christians.

66 Joel, *Gutachten*, 26.

67 Two scholars who are said by Jewish tradition to have founded the heresies of the Sadducees and the Boethusians.

68 Eisenmenger quotes the correct reading of *halakhah* 10:1 in Hebrew, giving as his source a comment in the book *Der jüdische Theriak*, published in 1681 by Johannes Wülfer in Nuremberg. This

Concerning heretics, Joel suggests comparing the cruel heresy laws and measures of the early Christian emperors with the abstract talmudic discussions on the same subject; this is an argument that he would use throughout his response. At times, the reader even gets a strong feeling of how emotionally involved Joel is with this argument, maybe more than he should be in the context of an expert opinion. Sometimes I ask myself, writes Joel at one point, if what I am doing here is not a bad joke. I am defending some unfavorable or probably even unfair sayings of the Talmud, when everybody knows that according to medieval law in Christian countries the emperor had the right to relieve the Jews of all their property and even to take their lives as he pleased. And this was not mere theory (as the Talmud) but common practice in the Middle Ages, which ended for the Jews as a matter of fact not in the sixteenth but in the nineteenth century.⁶⁹ How could anyone think that the medieval Jews would feel love and respect for those whose barbarism towards them was even worse than that of the old pagan world to which the Talmud reacted, Joel writes.⁷⁰

It seems that Rabbi Bloch was planning to evoke the same argument in his defense against Rohling before the Vienna court. In the book of his lawyer Josef Kopp, a long history of the Christian persecution of heretics is preserved,⁷¹ explicitly asserting that this was actually put into practice during the Middle Ages by the Inquisition, not a mere theory as in the rabbinic rulings. About Maimonides' hostile position towards the Christians, three points were to be made by Bloch: Maimonides was the personal physician of Saladin, and his loyalty to the Sultan would mean that his enemies were also Maimonides'. What Maimonides must have heard about the Crusades in this connection will not have engaged his sympathy towards the Christians. Finally, beyond the historical reasons, as a Jew the concept of the Trinity must have been repulsive to Maimonides. But still, Maimonides' influence on halakhic developments was limited and his reputation disputed, according to Rabbi Bloch. The French Tosafists, who even condemned Maimonides himself as a heretic, thought quite differently about the Christians. And it is a rabbinical rule, says Bloch, that in case of divergences between the Tosafists and Maimonides, the decision is always according to the former.⁷²

book contained an anti-Jewish tractate by a convert to Christianity, Samuel Friedrich Brenz, the response to this tractate by Rabbi Salomon Zvi and several comments by Wülfer (1651–1724), a Protestant Hebraist. In one of those comments, it seems, Wülfer quotes the Jesus-text from a manuscript of the *Mishneh Torah* that he saw in the collection of another Nuremberg theologian, Johann Michael Dillherr (1601–69). Cf. Eisenmenger, *Entdecktes Judentum*, 1:67–69.

69 Probably referring to pogroms in Russia and blood libel trials in other parts of Europe. Joel, *Gutachten*, 27–28.

70 Joel, *Gutachten*, 16.

71 Kopp, *Zur Judenfrage*, 92–95.

72 Kopp, *Zur Judenfrage*, 98.

Notably, Joel never discusses theological concepts such as the Trinity in his expert opinion. On the question of Christianity, according to Joel it makes no difference whatsoever if some talmudic sages believe that Jesus was a Jewish apostate. He had already shown how Maimonides' ruling concerning Christians was overturned by the vast majority of the later halakhic authorities, at least in Europe. At this point, by the way, we find Joel's only open attack against Jewish Orthodoxy. Mentioning that the authors of the "so-called *Shulhan 'arukh*" declare that the peoples of their time are not idolaters, he continues that in terms of *halakhah* "it is highly irrelevant if those men thought like this. The passage just proves that even a Jewish fanatic had no right to err in the manner of Rohling."⁷³ When the Talmud, in its time, reacted furiously to the heretics (*minim*), even if those heretics were early followers of Jesus, for the Talmud they were Jews and they could therefore in no way be compared to the Christians of today.

As shown above, the theological debate between Jewish Orthodoxy and the Reform movement concerning the Talmud can be roughly reduced to the question of whether a *historical* approach to rabbinic literature is possible, as the liberal movement tried to expound it,⁷⁴ or if this approach would violate the doctrine of the divine origin of the Oral Law. This debate was fought in the nineteenth century with all vigor.⁷⁵ One of the catalysts for the debate was a book by the founder of the Breslau rabbinical seminary Zacharias Frankel. In his 1859 *Darkhei hamishnah*, Frankel wrote in a controversial passage that the Oral Law of Judaism was of such great antiquity that we can refer to it *as if* it were revealed to Moses at Sinai. This formulation drew harsh reactions from Orthodoxy, with Rabbi Tzvi Benjamin Auerbach even calling the strictly observant Frankel a heretic for denying the divine origin of the Torah.⁷⁶ Rabbi Frankel, who had dissociated himself from the radical Reform movement in 1845, is generally seen as the founder of what he called the *Positive-Historical* school of liberal Judaism, a school to which Manuel Joel also clearly belongs.⁷⁷ But even within

73 Joel, *Gutachten*, 10, n. 2.

74 Their approach is complex. Joel explicitly denies that the mishnaic teachers invented the doctrine of the divine origin of the Oral Law in order to strengthen its authority (as claimed by Gildemeister). The mishnaic teachers were aware that they wrote down very old traditions, according to Joel, that had been in practice already for a long time (Joel, *Gildemeister*, 25).

75 The Orthodox weekly *Jeshurun* from June 1884 called the last 50 years "a period of permanent conflict (*unausgesetzter Kampf*) between the *Haredim* and their own brothers." See "Zum Verständniß der neuesten Phase der Reform" *Jeshurun* 26 (1884) 401.

76 See for this debate David Ellenson, *Wissenschaft des Judentums, Historical Consciousness, and Jewish Faith: the Diverse Path of Frankel, Auerbach and Halevy*, Leo Baeck Memorial Lecture 48 (New York: Leo Baeck Institute, 2004).

77 Frankel used this term for the first time in the public announcement from December 1843 of his new scholarly journal, the *Zeitschrift für die religiösen Interessen des Judenthums*. He wrote that

Orthodox circles this issue caused some serious annoyance. When Rabbi Hoffmann published his dissertation about the talmudic sage Mar Samuel in 1873, he committed an inexcusable sin in the eyes of the Frankfurt group around S. R. Hirsch by quoting several times from historical essays by *Wissenschaft* scholars, first and foremost Heinrich Graetz.⁷⁸ Although Hoffmann's book nowhere actually deviates from Orthodox positions, and Graetz is refuted on many accounts, Hoffmann fell from grace with Hirsch and moved on to teach at the seminary of Hildesheimer who had fully approved of his treatise.⁷⁹ Later, in 1885, when writing his book against Gildemeister, Hoffmann, obviously pressed by the written facts to admit a certain level of xenophobia in the rabbinical literature, openly resorts to historical means. Defending the *Shulḥan ʿarukh*, Hoffmann says that Rabbi J. Karo had the "Bedouin robbers" of the Palestine of his time (and not Christians) in mind when writing down unfavorable laws against Gentiles. About talmudic law concerning non-Jews Hoffmann writes that, as it was with the Roman Empire, also the ancient Jewish state had to give itself a law that regulated relations with foreigners (who lived there in great numbers) because Jewish religious law could naturally not be extended to these Gentiles.⁸⁰

In our context this historical approach, based on the assumption that pagan predominance forced some Rabbis to rule against ethical norms of Judaism, is indeed an effective way to defend the Talmud against the third of Rohling's major accusations, the appearance of specific, often disparaging sayings in the Talmud concerning Gentiles.⁸¹ Manuel Joel, of course, makes extensive

"the further development of Judaism must be based on scholarly efforts of a positive-historical nature." (Forschung auf positivem, historischem Boden) cf. Zacharias Frankel, *Anzeigen und Prospektus einer Zeitschrift für die religiösen Interessen des Judenthums* (Berlin: n.p., 1843).

78 David Hoffmann, *Mar Samuel, Rector der jüdischen Akademie zu Nehardea in Babylonien: Lebensbild eines talmudischen Weisen der ersten Hälfte des dritten Jahrhunderts* (Leipzig: Oskar Leiner, 1873) 28, 41, 50.

79 Cf. Breuer, *Jüdische Orthodoxie*, 171–72. Graetz himself had studied with Hirsch for three years in Oldenburg (1837–40); probably Hirsch never forgave him his "apostasy."

80 Hoffmann, *Der Shulchan Aruch*, 127 and 129–30.

81 Recently also some social, non-theological explanations have been published about the discriminatory laws against Gentiles. Porton says the mishnaic Sages, for example, hold that some business transactions with Gentiles are prohibited not (or not only) because they are idolaters but because they are "dangerous, greedy and tricky." The inconsistencies in the law are explained thus that "the Gentiles' character changes according to the context and the purpose of the rabbinic rulings" (Porton, "Forbidden Transactions," 334). Halbertal, on the other hand, reads the Mishnah-tractate *ʿAvodah Zarah* as being careful "to delineate the limits of a neutral space — a space that will enable Jews to coexist with what they perceive to be their ideological and religious enemy. In that space they will interact with pagans, but not in their capacity as pagans." Moshe Halbertal, "Coexisting with the Enemy: Jews and Pagans in the Mishnah," in Graham N. Stanton and Guy G. Stroumsa, eds., *Tolerance and Intolerance in Early Judaism and Christianity* (Cambridge, Mass.: Cambridge Univ. Press, 1998) 163.

use of a historical approach to the rabbinic rulings. For if one allows for a certain progress in *halakhah* (and this is what the actual term "*halakhah*" means), then there might be an outdated, historical law that was valid only for its time. To deny this is exactly the strategy of Rohling, and it is interesting enough that there is still a vast amount of talmudic teaching that can indeed be measured by the timeless ethical ideal that the anti-Semites want to apply to it. Of course, the philosophical question underlying this dispute is whether or not there exists a timeless ethical norm at all. Joel is extremely ambiguous about this point. At times he would say that some talmudic rulings "have aspects that hurt our present-day conceptions,"⁸² while at others, he seems to think that discriminatory laws against Gentiles never had ethical justification even in talmudic times but that their authors were a minority of fanatics.

In any case, the *Wissenschaft des Judentums* has written history on its banner, and Manuel Joel was one of the finest representatives of this movement. History meant not only the history of the Jewish people, as Graetz and others had started to write it for the first time. For the *Wissenschaft* scholars it meant also the history of the religious laws of Judaism. The liberal movement (and almost all *Wissenschaft* scholars were religious reformers) now comes in at this point with its modifications of the traditional law – strictly following the intentions of the Talmud, as Joel saw it. This position of liberal Judaism concerning the Talmud is described thus by Rabbi Samuel Bloch, the hero of the Vienna trial against Rohling: "If Orthodox Judaism about the middle of the past century declared the *Shulḥan ʿarukh* to be its palladium and shibboleth, this was an act of policy and self-defense. The peculiar characters of both the Palestinian and Babylonian Talmuds in the diffuse discussions of which everything is examined, approved or disapproved according to the laws of logic, without regard to any authority, and in which the greatest concessions are made to the requirements of every period, were directly calculated to favor religious Reform. In fact, learned leaders of Reform within Judaism based and carried out their innovations on Talmudic maxims."⁸³

Consequently, Joel discusses the historical approach to rabbinic literature in his own work *Gegen Gildemeister* from 1888, when he takes up the cudgel again in defense of the *Shulḥan ʿarukh*. He writes that if this codex expounds regulations concerning geese that grow on trees, as it does,⁸⁴ we would certainly agree that this law does not apply anymore. But why can't the same principle be used

82 Joel, *Gutachten*, 23. This would be an interesting deviation from the Reform movement's concept of "ethical monotheism" as the central teaching of Judaism. Eternal ethical norms must also be applicable to legal decisions in *halakhah*.

83 Samuel Bloch, *Israel and the Nations*, trans. Leon Kellner (Berlin: B. Harz, 1927).

84 *Yoreh de'ah* 84, 15. There it says that birds (*ʿofot*) that grow on trees and hang from them on their beaks are not kosher. This refers to a medieval northern European legend about certain geese that hatch in the Arctic so that nobody ever saw their eggs. Legal disputes about those geese be-

when the error is not a biological but a historical one? Are we really to think that the rules laid down by the Talmud 2000 years ago for the pagan world apply to the Christians of today? Even Orthodoxy would judge the Christians of today not from talmudic but from contemporary sources. The Orthodox learn from the Talmud what Judaism, and not what Christianity means, Joel writes.⁸⁵

Whereas Rohling and Gildemeister claim that halakhic development leads the way out of Judaism, Joel holds that only halakhic progress keeps Judaism alive. As an example of the *Wissenschaft* approach, Joel quotes Samuel David Luzzatto's criticism of the Maimonidean Code, where the Italian scholar and rabbi complained that Maimonides, by codifying the Talmud, tried to deprive the later generations of the possibility of choosing from different opinions as they are presented in the Talmud, according to those generations' needs and time.⁸⁶

Directed against Rohling, the practical statement that Joel makes in the historical context is that all elaborations about discriminatory civil laws in the Talmud were purely theoretical in his and Rohling's time. All contemporary Jews, even the most Orthodox, he says, have their civil matters regulated by the laws of the countries they live in, and not by the Talmud. No Jew, of whatever religious persuasion, would complain about this historical separation of religion and the national state. Indeed, the justification for such a separation, he continues, is embodied in the talmudic precept that *the law of the kingdom is the law (dina demalkhuta dina)*⁸⁷ established by the third-century Babylonian teacher, Mar Samuel.

As if this argument were not sufficient, Joel now applies a double strategy to the specifically unfavorable talmudic sayings towards Gentiles. On the one hand, he attempts to single out those passages as unrepresentative, exaggerated or even as jokes made by talmudic teachers giving their personal opinions. Concerning Rabbi Yoḥanan's prohibition against Gentiles studying Torah,⁸⁸ he

ing meat or not take place in both Christianity and Judaism from the twelfth till the seventeenth century. In 1188, Gerald of Wales even used the legend to convince the Jews of the possibility of immaculate conception. Cf. Gerald of Wales, *Topographia Hiberniae*, vol. 47, in Joseph Jacobs, ed., *The Jews of Angevin England: Documents and Records* (London: G. P. Putnam's Sons, 1893) 92–93. Rationalist thinkers such as Albertus Magnus or Roger Bacon, on the other hand, always derided the myth. Albert in particular succeeded in breeding the species with a domestic goose and described in his *De animalibus* how he saw them hatch chicks. For Jewish sources mentioning the legend, cf. "Barnacle Goose Myths," *EncJud* 4 (1972) 247.

85 Joel, *Gildemeister*, 17.

86 Joel, *Gildemeister*, 23. Luzzatto's criticism is in his *Studies in Judaism* (2 vols.; Warsaw: Ha'Tsefira, 1913) 1:164–65 (Heb.)

87 *b.B. Qam.* 113b. For an overview of the halakhic implications of this ruling, cf. Herschel Schachter, "Dina de'malchusa dina, Secular Law as a Religious Obligation," *Journal of Halacha and Contemporary Society* 1,1 (1981) 103.

88 *b.Sanh.* 59b. For the seeming contradiction to the story about the two Romans coming to Rabban Gamliel (see n. 1) the Tosafot ad locum offer three explanations: 1. the Romans posed as Jews,

writes that "a single teacher happened to be intolerant on this subject";⁸⁹ about those Rabbis who included Christianity in the mishnaic regulations for idolaters, obviously including Maimonides, he says "they performed an unhistorical act (*die Ungeschichtlichkeit begehen*) which was a "blunder" (*Schnitzer*), but this is only because they lived among Persians or Moslems."⁹⁰

On the other hand, he would compare the law of the Talmud to several quotes from the Church Fathers, the contemporaries of the talmudic Sages, on the same subjects, showing that their views of the Gentile were often more discriminatory than the Jewish ones.⁹¹ In a note, Joel cites the Roman Emperor Justinian's belief that killing a non-Christian was not murder. "And now they quote some talmudic passages," Joel exclaims, "that were written at a time when the religious zeal of the Christian emperors went raging through the sites of antique culture like the angel of death."⁹²

In summary, Joel writes that yes, there are some disparaging, abusive utterances concerning Gentiles in the Talmud, as well as some effusive (*überschwänglich*) passages about Israel. Some rulings show "passive fanaticism" on the Jewish side, like the rule not to heal idolaters, and there are some unfair laws concerning the property of idolaters, especially by Babylonian teachers. But after all, the "ethical conscience" of the Sages reacted already very early to those "sophisms of either fanaticism or of greediness"⁹³ and, even towards the idolater the talmudic age is, in practice, at least as humane as Christianity.

What Manuel Joel presents in his expert opinion as the approach of the Positive-Historical school of liberal Judaism towards the rabbinical literature is not a presumptuous rejection, nor would he exile the Talmud to the sphere of history. Joel is defending the Talmud to the best of his abilities, although he knows that his antagonist "is not an expert in the first place"—this being the opening statement of Joel's second expert opinion for the Royal Court.⁹⁴ Moreover, when, eleven years after he was asked to testify for the Talmud, another

2. they threatened the Jews with the governmental decree and the Jews were halakhically not allowed to sacrifice their lives for this, and 3. the Romans converted to Judaism before they studied the Torah with Rabban Gamliel, which would also explain why they volunteered not to report the few, unfavorable results of their studies to the government.

89 Joel, *Gutachten*, 4. This single word "intolerant" in connection with R. Yoḥanan was so unbearable for Joel's reviewer of the *Israelit* that he devoted about one third of his columns to the proof of how not being allowed to study Torah is in the Gentile's best interest. See n. 31 above.

90 Joel, *Gutachten*, 10.

91 Joel mentions, among others, Tertullian who indulged lustily in the thought of how the heretic will one day burn in hell; or Augustine who would not even allow the civil greeting of Gentiles.

92 Joel, *Gutachten*, 23 (n. 1).

93 Joel, *Gutachten*, 33.

94 Joel, *Gutachten*, 12.

anti-Semitic pamphlet was published, he voluntarily offered his services and fought back in a learned work, although this time it was the *Shulḥan ʿarukh* that was attacked, a codex that Joel did not see as binding for the Liberal Movement he was representing.

Both texts have certain apologetic tendencies but those tendencies do not represent Joel's general attitude. At times Joel would omit some of the more severe talmudic attacks against Gentiles, partly because in the editions he was working with those passages were censored, partly because the anti-Semitic challengers did not understand how precarious the rabbinic utterances themselves were. But Joel never defends Judaism at any price as his Orthodox critics seem to expect him to do; he admits candidly that some rabbinic rulings concerning non-Jews are discriminatory. This is not because of his liberal background; rather, his attitude to Judaism stems from the fact that he thinks history is on his side – those rulings should be explained by the harsh times of their origins but have no justification for his own era.

Thus, it was not only his honor and the honor of Judaism that he was defending.⁹⁵ His deeper concern seems to be a certain form of acceptance of the rabbinical literature by the liberal stream within Judaism: The Talmud is not the exclusive domain of Orthodoxy, Joel believes; the talmudic principles, its deductive logic and its dialectic approach to reality comply well with the modernizing tendencies of religious reform in the nineteenth century. The attempts at a liberalization of Judaism must rely on tradition; it must be possible to show from the same classical rabbinic sources that new forms of religious practice are necessary.

Even if many talmudic doctrines are antiquated, it is the method of development of the Jewish religion on the basis of the biblical texts that we can learn from the Talmud, in the same way that we still use its ethical teachings – with the utmost freedom.⁹⁶

95 Joel's personal attitude may be best explained with reference to two of his other works: In his revision of Geiger's Reform Prayer Book he replaced the traditional morning benediction of "who has not made me a *goy*" with "who has made me *Israel*" and, quite contrarily, in a clear instance of *Schadenfreude*, he shows how Albertus Magnus unknowingly quotes the Talmud for his own purposes: Albert, who himself signed the 1248 anti-talmudic decree of the Church in Paris, copied several passages from Maimonides' *Guide* into his own works without being able to differentiate where Maimonides speaks himself and where he quotes rabbinical literature. Joel revealed this ironic fact in his book *Verhältnis Albert des Grossen zu Maimonides* (Breslau: Schletter, 1863).

96 Joel, *Gutachten*, 33.

Judaism and the Idea of the Law

Leo Strauss and Yeshayahu Leibowitz's Philosophical and Ideological Interpretations of Maimonides

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The ideas of the modern Jewish thinkers Leo Strauss and Yeshayahu Leibowitz share a common root. Both men place the interpretation of Maimonides at the center of their research and their own philosophical statements. Both emphasize the centrality of the Law (*halakhah*) as the core of Judaism and draw heavily on Maimonides to support their claims. Although Strauss and Leibowitz agree on the centrality of the Law in Maimonidean thought, they differ in interpreting the meaning of the Law in Maimonides.

Strauss views the task of the Law as the creation of a political theology and identifies the Maimonidean ideal archetype as Moses, the lawgiver and leader. Leibowitz views the Law as the vehicle for the transformation of the individual and society from the realm of mundane existence into a state of true devotion to God. Leibowitz embraces Abraham as the Maimonidean archetype, seeing in him the personification of belief and an existential religious ideal.

Despite their opposing interpretations of Maimonides, both reject attempts to read the liberal ideal of separation of religion and state into Judaism. Neither thinker would accept this separation as ideal for a "good society" or for the Jewish polity. Both promote this separation as a compromise position, never the ideal.

Who is the Maimonidean ideal: Moses, the man of law, or Abraham, the man of faith? Answering this question goes far to explaining the divergence between two radically different modern Jewish political philosophies. Both Leo Strauss and Yeshayahu Leibowitz share the idea that the essence of Judaism is law. And while the characterization of Judaism as law is not their innovation – indeed, it is age-old – the way they understand the nature of that law, and their disagreement with regard to its character and its implications in regard to the question of religion and state, highlight how broad that characterization can be.¹

In investigating each philosopher's approach to the political implications of Judaism, it is instructive to understand their respective definitions of "law." Strauss uses the term "law" as referring to a general moral and political phenomenon and "Jewish law" as a particular case of a general rule. Leibowitz, on

¹ For a recent discussion of the character of Judaism as law see Menachem Kellner, *Must a Jew Believe in Anything?* (Oxford: Littman Library of Jewish Civilization, 2006).

the other hand, refers to the Jewish law as a unique phenomenon and uses the terms *halakhah* or “Torah and *mišvot*” (commandments) to differentiate between “Jewish law” and any other system of moral or political law. Both their mutual agreement on the essential character of Judaism as law and their different understanding of what “law” means are rooted in Maimonides, though they apply their conclusions to distinctly modern issues.

For each, the claim that the essence of Judaism is law excludes any modern attempts to define Judaism as a set of beliefs, as a faith, or as encompassing an ethnic group, and stands against two opposing modern Jewish ideological and cultural trajectories: universal humanism and ethnic nationalism. On the one hand, they both reject the modern inclination to emphasize the inner religious sentiment of the believer over the external performative expressions of religion, and so oppose the attempt to reduce Judaism to a “faith” that cultivates a universal moral way of life via inner religious sentiment, communal ceremonies of prayer, and sermons celebrating the prophets’ universal moral teachings. That is to say, both object to modern attempts to separate religion and religiosity. Judaism is no less about dietary laws and political laws than “spiritual” or “theological” laws. On the other hand, their conception stands against the Zionist and religious Zionist’s understanding of Judaism as national and ethnic identity. In this sense, both Strauss and Leibowitz stand in opposition to a wide spectrum of modern Jewish ideological and religious movements.

Both thinkers build an elaborate structure of rational claims, but the heart of their arguments lies elsewhere.² Beneath these rational and academic discourses rests an existential, and not solely rational, set of justifications. One cannot fully grasp their concept of the Law without appreciation of the fact that these justifications determine their individual understanding of law.³ For

2 See for example, Yeshayahu Leibowitz’s essays, “The Jew in His Community, on His Land, and in the World,” in Eliezer Goldman, ed., *Judaism, Human Values, and the Jewish State*, trans. Goldman, et al. (Cambridge, Mass: Harvard Univ. Press, 1992) 206–7, originally published in Hebrew as Yeshayahu Leibowitz, “היהודים בקרב עמם, בארצם ובקרב האומות” (Jerusalem and Tel-Aviv: Schocken, 1979) 292–93 (hereafter, Leibowitz, *Yahadut*), and his “יהדות, אמונה, היסטוריה וערכים” also in *Yahadut*, 303–21. Because *Judaism* is only a partial translation of *Yahadut*, I will be referring to both publications. For Leo Strauss’s autobiographical account, see “Preface” in his *Spinoza’s Critique of Religion* (New York: Schocken, 1965) mainly 1, 4–8. See also my discussion beginning on page 12 below.

3 For Leibowitz, the religious person has made a decision to become a believer, to worship God through the Law (Torah and *mišvot*). In this existential act, the person “creates islands of holiness in the sea of secular reality . . . only that limited [element] that subsists in human existence when directed towards heaven is the Holy” (my translation), as opposed to all other human acts and products, which are profane. Yeshayahu Leibowitz, *אמונה, היסטוריה וערכים* (Jerusalem: Akademon, 1982) 142 (hereafter Leibowitz, *Emunah*). Also see Avi Sagi, “אמונה לאבסורד: בין אמונה לקאמיוז,” *Iyyun* 42 (1993) 473; Hanah Kasher, “האמונה כביטוי של רצון: בין יוסף סולובייצ'יק לישעיהו ליבוביץ,” *PAAJR* 55 (1988) 11–13.

Strauss the justification underlying the idea of Judaism as law is his Nietzschean interpretation of Plato and Maimonides, while for Leibowitz it is the *‘aqedah* (The Binding of Isaac).

Construction of the debate between the two thinkers is also called for due to the fact that there was one documented occasion when a short and one-sided “dialogue” began, but was never continued. In 1955, Strauss visited Israel as a visiting professor at the Hebrew University. That same year, Leibowitz published his short, groundbreaking essay, “Maimonides the Abrahamic Man,”⁴ in which he directly refers to and disputes Strauss’s interpretation of Maimonides and the idea of the Law as it appears in his philosophy. Strauss never responded to this provocation.

Intellectually and politically, one of the most important outcomes of an investigation of their reliance on Maimonides is the two thinkers’ conclusions regarding the relationship between religion and state. The question of religion and state, in fact, plays a crucial role in both the political philosophy and actual political structures of modern liberal states, including the state of Israel. While Strauss’s political theology calls for an easement of the liberal imperative to separate religion and state, Leibowitz promotes their complete separation in the case of the Zionist state. The apparent difference can be attributed to the fact that, although the two men agree on the centrality of law in Maimonidean thought, they disagree on the meaning of the Law. Put another way, they have differing answers to one central question: What is the goal of Jewish law? They do not disagree over the meaning of individual statutes, but rather over the essential definition of law itself. But, as is demonstrated below, despite holding opposing understandings of the Maimonidean concept of the Law, Strauss and Leibowitz share a fundamental disagreement with those who perceive separation of state and religion as an ideal. Their position is based on the rejection of any attempt to read the liberal ideal of separation of religion and state into the Jewish religion and their refusal to perceive this idea as the ideal of the “good society.”⁵

4 “ליבוויץ על האדם האברהמי:,” *Beterem* (1955) 211; see also Warren Zev Harvey, “ליבוויץ על האדם האברהמי:,” in Moshe Hallamish, Hanah Kasher and Yohanan Silman, eds., *The Faith of Abraham in the Light of Interpretation through the Ages* (Ramat-Gan: Bar-Ilan Univ., 2002).

5 Leibowitz’s fight for the separation of religion and state in Israel was not based on a liberal political conviction but an attempt to protect religion from becoming the tool of a secular state. He did not reject the ideal of a halakhic state as such. See for example, Leibowitz, *Yahadut*, 155–91. See Avi Sagi, *The Jewish-Israeli Voyage: Culture and Identity* (Jerusalem: Shalom Hartman Institute, 2006) 34, 48–49 (Heb.); Haim O. Reznitzer, “Redemptive Theology in the Thought of Ye-shayahu Leibowitz,” *Israel Studies* 13:3 (2008) 137–59. For Leo Strauss, see for example, “What is Political Philosophy?” in his, *What is Political Philosophy and Other Studies* (Chicago and London: The Univ. of Chicago Press, 1959). Although Strauss provides a description of the evolution of political philosophy from classic antiquity to modern times, it is apparent to his readers that the description is not without bias. For him the classic Platonic model is the ideal.

Strauss and Leibowitz each use Maimonides to justify their respective approaches to both the essence of Judaism and Jewish law as well as to the relationship between the apparatus of the state and that of religion, but they ultimately disagree, defining Maimonidean thought and law in diametrically opposite ways. That difference can be traced to the archetypes present in Maimonides' work toward which each thinker is drawn. For Strauss, the Maimonidean hero is Moses the Lawgiver, while for Leibowitz, Maimonidean teaching celebrates Abraham the Ideal Believer. This disagreement crystallizes the divide between their opposing interpretations of Maimonides and their philosophies. Any exploration of the differences between Strauss and Leibowitz, therefore, contributes both to a clarification of their own teachings as well as to a greater understanding of the roles to which Maimonides has been put in modern Jewish thought. The implications go beyond theory, though, and extend to encompass the range of options, courses and implications of a Maimonidean-based political theology when implemented in a modern context.⁶

LEO STRAUSS

Leo Strauss (1899–1973) devoted the majority of his academic energy to what he called “the theological-political predicament.” Throughout his career, this theological-political predicament stood as a constant pillar, a central organizing feature.⁷ Strauss never directly defined the “theological-political predicament,” but based on his writings, we can construct a definition that encompasses an inherent clash between religion, reason, and society, as well as a dispute over the system for justifying those values that are the foundational structure of society. The predicament is manifested along three axes: 1. the opposition of two different paired sources of authority: revealed religion and philosophy, prophecy and philosophy, and the muse and the intellect; 2. the tension between the

6 Warren Zev Harvey, in his article “The Return of Maimonideanism,” *Jewish Social Studies* 42 (1980) 249–68, marks the importance of extensive analysis of the role of Maimonides in modern Jewish thought, but the scope of the article does not allow for an elaborate comparison between the thinkers. A major difference exists between my understanding of Strauss's and Leibowitz's Maimonideanism and Harvey's. Harvey claims that for Strauss (and in a different respect for Leibowitz), a living Maimonideanism is impossible today, while I see both Strauss and Leibowitz as thinkers who promoted the Maimonidean way as a living option for overcoming the challenges of modern liberal and humanistic society and state (see Harvey, “The Return,” 255, 260).

7 Strauss has stated, “Since then the theological-political problem has remained *the* theme of my investigations,” (emphasis mine, H.R.), Leo Strauss, “Preface to *Hobbes' politische Wissenschaft*,” trans. Donald J. Maletz, *Interpretation* 8 (1979) 1, originally published as the preface to his *Hobbes' politische Wissenschaft* (1st ed.; Neuwied am Rhein: Luchterhand, 1965) which is the German version of his *The Political Philosophy of Hobbes* (Chicago and London: Univ. of Chicago Press, 1952). Steven B. Smith has said, “The core of Strauss's thought is the famous ‘theologico-political problem,’” in his *Reading Leo Strauss* (Chicago: Univ. of Chicago Press, 2006) 26.

philosophers on the one hand, whose loyalty is first and foremost to the truth, and society on the other hand; 3. the structure of liberal democracy which prescribes separation of religion and the state along with the restriction of religion to the private sphere.⁸

While still a young man, Strauss set himself the goal of finding an alternative to modern liberal political thinking, which he saw as further exacerbating the theological-political predicament.⁹ He remained committed to this goal for the rest of his life. Strauss represented the opposing poles of the theological-political predicament as Jerusalem and Athens. The unsolvable antagonism between Jerusalem and Athens, then, is between two opposing claims: divinely revealed law and human rational law.¹⁰

Strauss based his conceptualization of the theological-political predicament on Maimonides' thought, as manifested in the *Guide for the Perplexed* and in the *Mishneh Torah*. Strauss saw these works as the quintessential models for managing the predicament. Maimonides' model becomes, for Strauss, the embodiment of the alternative to any modern liberal attempts to undermine religious thinking. Maimonides' system of reasoning and discourse sets the standard, and as such must be carefully protected from any distortion. It thus represents the stumbling block on which modern rationalism falls.¹¹

8 For further discussion of the first and second axes, see Thomas L. Pangle's introductions to Leo Strauss's two collections, *Studies in Platonic Political Philosophy* (Chicago: Univ. of Chicago Press, 1983) esp. 10–11, 19–23, and *The Rebirth of Classical Political Rationalism*, ed. Thomas L. Pangle (Chicago: Univ. of Chicago Press, 1989) xix–xvi. On the third axis, see Leora Batnitzky, *Leo Strauss and Emanuel Levinas: Philosophy and the Politics of Revelation* (Cambridge: Cambridge Univ. Press, 2006) 181; and Paul Mendes-Flohr, "The Theological Political Predicament of Modern Judaism" in Abino Babolin, ed., *Politica e Filosofia della Religione* (Perugia: Benucci, 1994) 186, 303. See also the article by David Janssens, "ציונות ונאורות בכתביו: בחינה מחודשת של רימר: יהדות, המוקדמים של ליאו שטראוס", *Iyyun* 50 (October 2001) 409, 413. In this article, Janssens shows that the theological-political question as it arises in Strauss's early writings revolves around how to reconcile the essentials of Jewish theology with the principles of modern political science. Steven Smith presents the aspect of the third axis ("predicament") as the conflict between the modern idea of triumphant progress through the natural sciences that serve as the basis of political atheism on the one hand, and both Athens and Jerusalem on the other hand; Smith, *Reading Leo Strauss*, 27–30. For further discussion of Strauss and his political theology see Haim O. Reznitz, "ליאו שטראוס כתיאולוג מדיני", in Christoph Schmidt and Eli Schonfeld, eds., *האולוחים המודרנה היהודית והתיאולוגיה הפוליטית* (Jerusalem: Van Leer Institute and Hakibbutz Hameuchad, 2009) 70–102.

9 See Strauss, "Preface," in *Hobbes' politische Wissenschaft* and his "Preface to *Hobbes' politische Wissenschaft*," *Interpretation*, 1; see also Paul Mendes-Flohr, "The Theological Political Predicament," esp. 285–93 and n. 3; see also, Allan Bloom, "Leo Strauss, September 20th 1899–October 18th 1973," *Political Theory* 2:4 (November 1974) 373.

10 See, for example, his article "Jerusalem and Athens," in Strauss, *Platonic Political Philosophy*, 166.

11 Leo Strauss, *Philosophy and Law*, trans. Eve Adler (Albany: State Univ. of New York Press, 1995) 21, 102.

Following Maimonides, Strauss perceives revealed law as a binding political law that incorporates mythos and esoteric philosophical teaching.¹² Law is the noble lie, a creation of a myth. That is, it provides the myths that are the blueprint for religion. The Law is "noble" because it sustains the mechanism needed for the well-being of society at large. It inspires the members of society to sustain its organization and encourages capable individuals to strive for ideal philosophical achievements. Thus, for Strauss, the role of the Law in Maimonides' writings is indeed a theological-political enterprise. In this sense, although the substance of Maimonides' philosophical thought is Aristotelian, it functions within the Platonic framework of a political philosophy, with the metaphor of the Platonic cave at its core.¹³

Strauss viewed Platonic political philosophy as epitomized in the work of both the Muslim *falasifa* and in Maimonides. What Plato could only assign to an ideal future (and an ideal philosopher king), they located, respectively, in Muhammad and Moses. Both assign the prophet the role of implementing Plato's model of the ideal philosopher-king and lawgiver.¹⁴ Following Aristotle, Maimonides asserts that "man is political by nature."¹⁵ Therefore political law is a natural necessity, and the Mosaic model of prophecy becomes a legislative prophecy.

By nature, however, not all humans are the same in body and mind, nor can all fully accomplish or reach the highest levels of intellectualization. Political law will, therefore, provide for the physical well-being of the members of society, "the ordering of the city" (*nomos*), and the cooperation of its individual parties, so that all may live in peace and prosper. In the ideal law, or, in Maimonides' terms "a divine law," simply "ordering the city" (*medinah, polis*) is not sufficient. Indeed, a divine law also provides "the soundness of belief . . . and . . . desires to make man wise." Divine law advances the life of reason.¹⁶ Divine law sets forth the ideal conditions for the education of the philosopher. Once the philosopher perfects his intellect and imaginative faculty, he rises to the status of prophet.¹⁷ Under the Mosaic model of legislative prophecy, the prophet

12 Strauss, *Philosophy and Law*, 89; Maimonides, *Guide*, III, 27.

13 Strauss, *Philosophy and Law*, 103. For the parable of the "cave" see Plato's *Republic*, Book 7, 515-18, for "noble lie" see 414. For a discussion of the idea of "noble lie" in modern political philosophy, see Daniel Dombrowski, "Plato's Noble Lie," *History of Political Thought* 18:4 (1997) 565-78.

14 "Plato's requirement that philosophy and political power must coincide if the true state is to become actual, Plato's concept of the philosopher-king, furnishes the outline whose filling-in in the light of actual revelation yields the concept of prophecy held by the *Falasifa* and Maimonides," Strauss, *Philosophy and Law*, 127. See also "Preface," Strauss, *Spinoza's Critique*, 11.

15 *Nicomachean Ethics*, I, 7, 1097b; see also *Politics* I, 2, 1253a 2.; *The History of Animals* I, 1, 488a 7.

16 See Maimonides, *Guide for the Perplexed*, trans., Shlomo Pines (Chicago: The Univ. of Chicago Press, 1963) II:40, p. 384.

17 "Know that the true reality and quiddity of prophecy consist in its being an overflow overflow-

then becomes a leader and lawgiver. The prophet, then, is a supra-philosopher who can subordinate the imaginative faculty to the service of intellectualization. Strauss summarizes as follows:¹⁸

... the prophet must be philosopher/statesman/seer/(miracle-worker) in one *in order that* he may be the founder of the community directed to the specific perfection of man, the perfect community. If the founder of the perfect community must be a prophet, but the prophet is more than a philosopher, this means that the founding of the perfect community is not possible for a man who is only a philosopher. Hence the philosopher too is dependent on a law given by a prophet; the philosopher too must obey the prophet; he would have to obey him even if his theoretical insight were no less than the prophet's; for his theoretical insight would not make him capable of legislation; and man, as a political being, can live only under a law.¹⁹

Once the imaginative faculty is at the service of the intellect, the philosopher who ascends to the level of a prophet may enact laws. The prophet thus simultaneously speaks the language of the masses and that of the philosophers.

Following Maimonides, Strauss holds that the ideal Law allows and encourages individuals to progress toward achieving the ultimate purpose in life, that is, philosophical contemplation. Strauss understands Maimonides' thought as addressing the twofold challenge of the individual and society. Political philosophy, then, reflects both the process of elevation of the individual towards that philosophical ideal alongside each person's active moral responsibility towards society and its well-being, all the while negotiating the different

ing from God, may He be cherished and honored, through the intermediation of the active intellect, towards the rational faculty in the first place and thereafter towards the imaginative faculty. This is the highest degree of man and the ultimate term of perfection." Maimonides, *Guide*, 11:36 (ed. Pines, p. 369).

18 In this context Strauss writes, "It is *because* the prophet sees more and more directly than the philosopher that he is bewildered. From this it can also be understood how the collaboration of the imaginative faculty in prophetic knowledge can be the basis of the prophet's superiority over the philosopher: it is *because* the prophet knows more and more directly than the philosopher, *because* he is blinded by the all-too-dazzling unfamiliar light, that he presents the known figuratively; the known fills him *completely*, seizes him completely, thus including his imaginative faculty as well. . . . [The imaginative faculty is] put completely into service, 'from above,' it certainly cannot *derange*, as it deranges philosophic knowledge in the case of other men. The prophet represents 'God and the angels' figuratively and thus corporeally not because he *holds* them to be corporeal — only the ignorant do this — but because he has come to know them directly in their incorporeality, and thus more clearly than the philosopher has." Strauss, *Philosophy and Law*, 110.

19 Strauss, *Philosophy and Law*, 121, see also, 110.

levels of intellect and psychological disposition of the members of any given community. The Law, therefore, is composed of exoteric and esoteric elements. In its exoteric form, which even the uneducated masses can comprehend, it is directed towards the general well-being of society and its members and incorporates partial truths (one could even say, it simplifies complicated truths) and constructive myths that keep society at peace. Such exoteric myths could be the stories written in the book of Genesis or the principle of providence. Law thus enables society at large to be directed toward an intellectual and religious ideal and helps sustain tolerance toward the philosophy that serves as the foundation of its religious way of life. By contrast, its esoteric form is necessarily misunderstood by the masses, and can potentially be perceived by them as heresy, ultimately leading to the persecution of the philosophers and the destruction of philosophy, even though it is the inner teaching of religion itself. Alternatively, esoteric philosophical thought might actually damage the religious devotion of the masses and lead to the destruction of society by undermining the Law itself.

Maimonides' Mosaic model of prophecy was so attractive to Strauss because it remained open to future development. Moses is understood as having laid the foundations of a paradigm that allows for change within itself. Moses stands as the role model for all subsequent prophets, and therefore serves as an open-ended paradigm of prophecy. Thus, prophecy is now understood as a natural phenomenon capable of progress and change.²⁰ Within this system, the Torah is first and foremost law, and Moses' prophecy is a legislative enterprise, one that also reflects the limits of the Law. Since law is given to all members of society, and not just to philosophers, and arises within a given cultural and historical context, when the context changes, so too does the particular content of the prophecy. As a result, Jewish law reveals itself to be capable of development, change and adaptation to the changing social and political contexts without altering its core. Potentially, living within the law allows the ascent of the philosopher to the highest level open to humans – a connection with the Active Intellect, and so to prophetic capacity. That is to say, the philosopher can yet again become a leader and lawgiver within the system and society.²¹ Therefore, the Maimonidean model of Mosaic prophecy is presented by Strauss as an eternal

20 Leo Strauss, "How to Begin to Study *The Guide of The Perplexed*," in his introduction to Maimonides, *Guide* (ed. Pines, xxxiii).

21 See also, Warren Harvey's analysis of Maimonides' concept of prophecy and active intellect, "I dare to present the matter as follows: if Moses our Teacher received the Torah through a unification (to the extent that it is possible) with the Active Intellect, then Maimonides set down the laws of the Torah while also in a unification (to the extent that it is possible) with the Active Intellect, which is to say, in unification with Moses our Teacher," Warren Zev Harvey, "Political Philosophy and the Halakah in Maimonides," in Joseph Dan, ed., *Binah: Studies in Jewish Thought, History, and Culture* (3 vols.; New York: Praeger, 1994) 3:58.

structure that does not lose its relevance in the present age. Rather, it is a natural model that corresponds to the nature of human beings and social organizations. In other words, it corresponds to the theological-political predicament. Maimonides, then, presented Strauss with an ideal through which the eternal need for law is answered. The question still to be asked is how Strauss imagines the possible implementation of such a model in modern times. In a recent study, Leora Batnitzky argued that for Strauss, revelation and law are identical and therefore philosophy and revelation stand in a fundamental tension (see the definition of the theological-political predicament above). Maimonides, according to Strauss, recognizes this tension and derives from it the limitation imposed on philosophy by the Law. Maimonides' rationalism is for Strauss "the paradigm of rationalism because he [Maimonides] recognizes that while philosophy is weak in regard to grounding a universal law, revelation still does *not* have a status of philosophical truth. . . . Religion and philosophical rationalism depend upon appreciating the incommensurability between philosophy and revelation, *from both sides*."²² Classical philosophy is fundamentally skeptical and also skeptical of itself. Therefore, it recognizes its own limits in providing the final word about the good for itself. Philosophical skepticism "bolsters the role of religion . . . [and] also the philosophical and intellectual importance of religion."²³ But Batnitzky argues that for Strauss a return to society predicated on divine law is impossible. Strauss's Maimonideanism amounts to a "refusal to resolve philosophical, theological, and political ambiguities." It is Socratic at its core. Maimonides' model is applicable to religion in a modern liberal democracy. Religion is in an exilic situation; it must operate within an external framework set by a democratic, liberal constitution. Religious communities must live in unresolved ambiguities of political and religious life. But since Strauss's Maimonidean model applies mutual skepticism regarding faith and philosophy, it leaves the tension between philosophy and Law (revelation) open to what Strauss called "the mutual influence of philosophy and theology."²⁴ Unlike Batnitzky, I claim that, inspired by the philosophy of Nietzsche, Strauss points towards yet another stage of the theological-political predicament.

STRAUSS AND THE NIETZSCHEAN-PLATONIC OPTION

As shown above, Strauss argues that according to Maimonides the model of Mosaic prophecy allows for progress beyond Moses. But does Strauss suggest that prophecy, that is, revelation of Law, is still an option today?

Strauss identifies the crisis of modernity as a three-stage deterioration in

²² Batnitzky, *Leo Strauss and Emanuel Levinas*, 110–11, see also 118, 127, and 129.

²³ Batnitzky, *Leo Strauss and Emanuel Levinas*, 132.

²⁴ Batnitzky, *Leo Strauss and Emanuel Levinas*, 138.

western culture, or in Strauss's language, as occurring in "three waves": it begins with historicism, turns into relativism, and ends with self-destructive nihilism.²⁵ In Strauss's schema, the first modern move was to separate between the *Is* and the *Ought*, and thus to renounce the possibility of natural law. Nature (*Is*) cannot serve as a criterion by which moral and social law (*Ought*) can be determined or agreed upon. Then came the historicists who contextualized the *Is*, turning all *Is* to *Ought*. Once the objective criterion to judge between different conceptions of *Ought* is lost, every "scientific" determination of *Is* becomes relative and contextualized to its time and place, that is, to the particular circumstances and cultural biases existing in the act of determination of the *Is*. The modern cultural, moral and existential predicament is not just that humans do not agree upon a basic set of *Is*, and not just that the *Is* is understood as a product of prior value judgment – as *Ought* – but that *Ought* becomes perceived as multi-historical and multi-cultural, resulting in a different and relative abundance of options of *Oughts*. That is to say, the third, and most severe stage is that of moral relativism that leads humanity toward moral and political nihilism.

In order to realign the *Is* and the *Ought*, Strauss integrates Maimonides' model of prophecy with the Nietzschean notions of "the philosophers of the future" and "eternal return" to arrive at a new breed he terms the "new philosophers." The last paper Strauss published was an analysis of what he considers "the most beautiful of Nietzsche's books, *Beyond Good and Evil*," which he included in the middle of his book, *Studies in Platonic Political Philosophy*.²⁶ Strauss emphasizes that the only way we can overcome modernism and relativism is through a return to the Platonic Natural Cave, which for Strauss meant the needed return to nature as a solid criterion for the human intellectual enterprise and, from there, back to Maimonides' doctrine of prophecy.²⁷ The only path back, Strauss claimed, is through Nietzsche. In spite of the fact that Strauss often criticizes Nietzsche as the dominant philosopher of the "third wave" of modernity, usually when he specifies the dangers of modernism and the dangers of relativism and nihilism,²⁸ he claims that it is Nietzsche who provides us

25 See "Three Waves of Modernity," in Leo Strauss, *An Introduction to Political Philosophy* (Detroit: Wayne State Univ. Press, 1989) 81–98; and his, "The Crisis of Our Time" in Harold J. Spaeth, ed., *The Predicament of Modern Politics* (Detroit: Univ. of Detroit Press) 41–54.

26 Cited by Pangle in Strauss, *Studies in Platonic Political Philosophy*, 24. I emphasize the fact that this article was placed in the "middle" of the book, together with his article on "Jerusalem and Athens," because of Strauss's hermeneutical method of reading esoteric philosophical literature. For him, the center is "the least exposed part" where the philosopher can express his opinions more clearly. See Leo Strauss, *Persecution and the Art of Writing* (Chicago: The Univ. of Chicago Press, 1952) 13 and 185.

27 Strauss, *Philosophy and Law*, 136.

28 See for example, Strauss's essays "Three Waves of Modernity," in Strauss, *Introduction to Polit-*

with a possible turning point. Nietzsche relativizes *all* values and elevates us above the relativistic modern horizon.²⁹ Nietzsche stands at the peak of historicism, and through him we can return to anti-nihilism. Nietzsche presents the “transvaluation of all values” that enables the rediscovery of truth as such, truth that is beyond good and evil:

... precisely the realization of the true origin of all ideals – in human creation or projects – makes possible a radically new kind of project, the transvaluation of all values, a project that is in agreement with the new insight yet not deducible from it. . . . But does all this not imply that the truth has finally been discovered – the truth about all possible principles and action? Nietzsche seems to hesitate between admitting this and presenting his understanding of the truth as his project or his interpretation. Yet in fact he did the former; he believed he had discovered the fundamental unity between man’s creativity and all beings. . . .³⁰

The new philosophers who succeed Nietzsche and his project of “transvaluation of all values” return to the Platonic Natural Cave, where they become the prophets:

The new philosophers *are or act*, we are tempted to say, to the highest degree according to nature. They are or act also to the highest degree according to reason, for they put an end to the rule of unreason, and the high – the high independent spirituality, the will to stand alone, the great reason (aph. 201) – is evidently preferable to the low.³¹

The cycle of “return” is complete with a new opening toward God, because the new philosopher is “an heir to the Bible” and his soul “has been affected by the Biblical belief in God that is Holy”; he is “an atheist who is waiting for god who has not yet shown himself.”³² One has to note that the use of “God”

ical Philosophy, 81–98; “Relativism,” and “Progress or Return?” in his *Rebirth of Classical Political Rationalism*, 13–26 and 227–70, respectively; and “What is Political Philosophy,” in his *What is Political Philosophy?*, 54–55.

29 “Relativism,” in Strauss, *Classical Political Rationalism*, 25–26; see also his *Philosophy and Law*, 135–36, n. 2.

30 “The Three Waves of Modernity,” in Strauss, *Introduction to Political Philosophy*, 96.

31 Strauss, *Platonic Political Philosophy*, 185.

32 Strauss states, “. . . for while Plato had seen the features in question as clearly as Nietzsche, and perhaps more than Nietzsche, he had intimated rather than stated his deepest insights. But there is one decisive difference between Nietzsche’s philosophy of the future and Plato’s philosophy. Nietzsche’s philosopher of the future is an heir to the Bible. He is an heir to that deepening of the soul, which has been affected by the Biblical belief in *God* that is holy. The philosopher of the

and then "god" is in the original, and we have to assume that it is written with intention.³³ Hence, with the new philosophers we might regain a version of Maimonidean political theology. This is not to suggest that the content of the law given by the new philosopher will be similar to the content of Jewish law given by Moses or as structured and codified by Maimonides in his *Code (Mishneh Torah)*, but it will retain the same basic principle. The product will be Torah (Law) rather than straightforward philosophy stripped of myth. Because their understanding of the world will be rooted once again in nature, and they will act according to the model of the Platonic cave and the influence of the biblical God, the new philosophers will "prophesy" new political theology.

In his essay "On Leo Strauss," Milton Himmelfarb presents Strauss as "conservative" and attributes Strauss's conservatism to the Aristotelian influence prevalent in Strauss's work. While Strauss appears conservative because of his critique of modernism, in fact, he is a radical who calls for the abrogation of liberal political and religious structures. Once focus is directed to Strauss's interpretation of the Nietzschean "eternal return" as a return to Platonic political philosophy that is "affected by Biblical belief in God that is holy," conservatism or Aristotelianism can no longer be attributed to him.³⁴

The connection between a Maimonidean model of prophecy and Nietzsche is the unique element in Strauss's claim that the essence of Judaism is law. The return to Maimonides is a Nietzschean "return." Moses, the prophet, and Moses (Maimonides) become the vertex where Plato and Nietzsche converge. Thus Strauss provides a modern justification for the claim that Judaism is law, and as such Judaism corresponds to the eternal theological-political predicament.

The "philosophers of the future" are aware of the limits of philosophy in the moral and political realm and are open to incorporating political theology into their teaching. Now approaching the highest level of intellect open to humans, they assume the role of the prophets. Their return to the "cave" is marked by their actions as leaders who reaffirm the role of the Law in society and prescribe law when necessary. That is to say, they create political theology. From a Straussian-Maimonidean perspective, the ideal model of philosopher-prophet combines halakhic leadership with philosophical excellence and ascends to the level of the prophets.³⁵

future, as distinct from the classical philosopher, will be concerned with the holy. His philosophizing will be intrinsically religious. This does not mean that he believes in God, the Biblical God. He is an atheist, but an atheist who is waiting for a *god* who has not yet shown himself." "An Introduction to Heideggerian Existentialism," Strauss, *Classical Political Rationalism*, 41.

33 It is my understanding that according to Strauss it is not a circular return to the "Biblical God" but a spiral return to religion with opening to the divine that might appear in new forms.

34 Milton Himmelfarb, "On Leo Strauss," *Commentary* 58:2 (August, 1974) 62–63.

35 The reader can find a different interpretation of the connection between Nietzsche and Strauss's

YESHAYAHU LEIBOWITZ

Although Yeshayahu Leibowitz (1903–94) was a scientist, he is well-known to scholars and the Hebrew reading public as a Jewish thinker involved in the ongoing debates concerning questions central to contemporary Jews: What is Judaism? Who is a Jew? What is the moral obligation of Israeli society, politics and the armed forces? What, if any, are the connections between the ethical predicaments of the state of Israeli society, politics and armed forces, and Judaism? Leibowitz's teachings and writings range from reflections on the weekly Torah portions to such issues as the separation of state and religion, as well as the occupation of the West Bank after the Six Day War (1967) and its ongoing impact on Jewish and Israeli culture and morals. Extensive references to the writings of Maimonides, or more specifically, Maimonides' concept of faith and religion, appear in all of his writing. According to Leibowitz, Maimonides proposes the ultimate model of Judaism as a faith and a way of life dedicated solely to the pure form of worshipping God: executing His commandments, His Torah, in other words, His Law.³⁶

Leibowitz perceives reality as twofold, a duality of extreme oppositions made up of nature and God. Nature includes in it all the faculties of the human being, including the soul. God can be understood as that which really "is," or that which is not nature. The human being faces an existential decision between two extreme, unbridgeable opposites, being enslaved by nature or becoming a devoted servant and worshiper of God, in Hebrew, *'eved hashem*, which means "God's slave." No middle ground exists between these two dichotomous positions. God doesn't dwell in, or extend Himself to nature, and man's soul doesn't partake of God. The ultimate human decision is in having to choose between life embedded in the natural, human, secular sphere and the religious sphere. To enter the religious sphere is to enter into a total commitment to the yoke of Torah, to serve God through the performance of His commandments, which are referred to by the general term, "Torah and *mišvot*." Those commandments are

philosophy presented by Catherine and Michael Zuckert. According to them, "Nietzsche's critique of modernity was, for Strauss, a possession of lasting value. Strauss refused to heed Nietzsche's call for a 'philosophy of the future,' however," Catherine and Michael Zuckert, *The Truth About Leo Strauss* (Chicago and London: The Univ. of Chicago Press, 2006) 90.

It seems to me that their conclusion underestimates the weight Strauss gave to the potential direction Nietzsche's teaching can be taken by the "successors" of his philosophy and therefore by candidates for the title of "philosophers of the future." See, for example, Leo Strauss, *Natural Right and History* (Chicago and London: The Univ. of Chicago Press, 1965) 26, where he refers to the way Nietzschean philosophy can combat the dangers of "historicism."

³⁶ "Maimonides is the most powerful image in the history of Judaism, from the age of the Patriarchs and the Prophets to the present age, of a knowledge of God based on religion and faith," Yeshayahu Leibowitz, *The Faith of Maimonides* (New York: Adama Books, 1987) 14.

expressed through Jewish law, the *halakhah* as it was articulated down through the generations of rabbinic interpretation. The act of accepting the yoke of Torah and *mišvot* represents the ultimate expression of man's free will. It cannot be determined by reason, only by an existential act of faith. The necessity of that choice is a pillar of Leibowitz's teaching, which he identifies as the teaching of Maimonides:

To Maimonides, it is perfectly clear that every man, inasmuch as he is part of natural reality, is subject to the causality inherent in this natural reality and to its consequences. From this point of view, all the events of his life are included in a chain of causes and effects imprinted by the creator on His world. But man's voluntary decisions are not derived from this general reality; they are given into the hand of each individual. The most important of these decisions, [the one that is the only meaningful decision] in Maimonides' view, is the decision whether to direct man's consciousness to knowledge of God and His worship or to direct it toward any other purpose.³⁷

Indeed, for Leibowitz, Judaism is essentially law, but the core of that law is not directed towards the regulation of the "good society." The Law in its essence does not derive its detailed content from nature and is not a codex formed in order to correspond to human nature and its natural need to form a society. On the contrary, it is directed towards the elevation of the individual and the community to an unnatural level of being *'eved hashem*, God's slave/worshiper. As God is totally separated from anything natural, so service to Him cannot be derived from nature nor can it benefit nature. It is, therefore, "unnatural" in the strictest sense of the word. The "unnatural" status of the Law has three aspects: the purpose of the Law; the suspension of human reason and will; and the denial of any attribute of holiness and sanctity to natural phenomena.

Regarding the purpose of the Law, it does not fulfill, and is not directed toward, any natural need of the human being:

If the Mitzvoth are in the service of God, not of man, they may not be directed toward the satisfaction of human wants. Any attempt to ground

37 Leibowitz, *The Faith*, 77. The translator did not translate the sentence in its entirety, and I have provided the missing phrase in the brackets. The Hebrew sentence reads: "החשובה שבהכרעות אלה: ... להכרעה שלדעת הרמב"ם היא לבדה משמעותית ... אמונתו של הרמב"ם," Yeshayahu Leibowitz, *אמונתו של הרמב"ם* (Tel-Aviv: Misrad Habitahon, 1987) 60.

See also, "Maimonides is a determinist with regard to the whole of natural reality, to the concrete facts which take place in the world, since regularity is implanted in them – causality is the will of its creator and upholder. . . . But Maimonides is an extreme indeterminist as to the subjective existential constituents of man – his voluntary decision," Leibowitz, *The Faith*, 84.

them in human needs – cognitive, moral, social, and national – deprives them of their religious meaning. If the commandments were expressions of philosophic cognition, had a moral function, or were directed at the perfection of the social order or the conservation of the people of Israel, the observant Jew would be doing service to himself, to society, or to the nation. Instead of serving God he would be utilizing God's Torah for his own benefit . . .³⁸

Put another way, "there is neither a religious nor a philosophic need to assimilate halakhic practice to the concepts or interests of man."³⁹

In order to achieve emancipation from "the bondage of nature" by overcoming one's natural inclinations (*yešer*), one must obey God's commandments. But that emancipation from the bondage of nature cannot be achieved by secular, rational or ethical systems of considerations. The rational and ethical, therefore, are suspended and, finally, transcended when one fully accepts the yoke of Torah and *mišvot*. The individual suspends and erases his or her human will and subordinates him or herself to God's will. The crystallization of this suspension is symbolized in the Abrahamic act of the *'aqedah* (The Binding of Isaac) in the book of Genesis. All reason, all natural emotions, all human morals were suspended by Abraham as he set out to fulfill God's decree.⁴⁰

Finally, the Law (Torah and *mišvot*) prescribes a radical struggle against any human inclination to attribute holiness to natural phenomena or human values: "For idolatry is simply the representation of things profane as sacred, as possessing supreme and absolute worth."⁴¹ The attributes "supreme" and "absolute" can be ascribed only to God, not to anything human and natural. The existential aspect of this perception of the Law is driven by Leibowitz's claim that

38 Yeshayahu Leibowitz, "Religious Praxis: The Meaning of Halakah," in Goldman, *Judaism*, 17.

39 Leibowitz, "Religious Praxis," 22, see also p. 19, "Halakhah as a religious institution cannot admit the category of the ethical. . . . 'You shall love your neighbor as yourself' is the great rule in the Torah not because it is a precept transcending the formalism of law and above the Mitzvot but precisely because it appears as one of the 613 Mitzvot. . . . 'You shall love your neighbor as yourself' does not, as such, occur in the Torah. The reading is: 'You shall love your neighbor as yourself, I am God.' The duty to love one's neighbor is not a corollary of man's position as such but his position before God." According to David Hartman, Leibowitz views prayer in Judaism as having "nothing to do with the social, psychological, economical, or any aspect of a person's life. . . . Prayer is a mitzvah and as such it means that you are duty-bound to serve God; you are obligated to make God the center of your universe," David Hartman, "Prayer and Religious Consciousness: An Analysis of Jewish Prayer in the Works of Joseph B. Soloveitchik, Yeshayahu Leibowitz, and Abraham Joshua Heschel," *Modern Judaism*, 23:2 (2003) 110–11.

40 Hartman, "Prayer and Religious Consciousness," 110–11. See also, Yeshayahu Leibowitz, "הַדְּמִיּוּת הַלְּבָבִית" *הַדְּמִיּוּת הַלְּבָבִית*, 20, col. B and 21, col. A; and his, "Fear of God in the Book of Job," in Goldman, *Judaism*, 49.

41 Leibowitz, "Religious Praxis," 25.

only in the full acceptance of the Law as the total negation of any utilitarian motive directed to the service of human ends can freedom be attained. But freedom itself is gained by total enslavement to God's decree. Leibowitz writes:

For I have repeatedly contended that life governed by Mitzvoth (commandments) is not comparable to any life-style motivated by human inclinations and urges. It is the assumption of the yoke of the Kingdom of Heaven, not the yoke of human nature. Therefore, by observing the Mitzvoth, one in a sense subdues nature and frees himself from subjection to it.⁴²

The purpose of the Law, according to Leibowitz, is to stamp out idolatry, with idolatry categorically defined as assigning a religious value to things human and to things that serve human ends. When "idolatry" is used in this context, it refers not just to pagan cultures, but also to idolatry within any faith, including Jewish civilization itself.⁴³ The inner Jewish battle, then, becomes the constant religious struggle to elevate from Torah-not-for-its-own-sake to Torah-for-its-own-sake. According to Leibowitz, both Maimonides' *Guide* and *Code* (*Mishneh Torah*) serve this agenda. The Law must not be put to the service of the Good Society or of the ideal, Platonic city. The Law has a religious meaning not because it is believed to be revealed or dictated from heaven for the betterment of the human condition, or because it reflects a divine *eidōs*, but because it is a Law that is performed by an individual and a community entirely for the sake of Heaven.⁴⁴

It is in Abraham's willingness to sacrifice his son that Leibowitz views the absolute privileging of Heaven. Abraham represents the ultimate model of elevation to the perfection of faith, in which worshipping God is the total negation of everything worldly and human. The total suspension of human will and ethics is the ultimate stage of belief, and the essence of Torah-for-its-own-sake. It does not indulge in utilitarian reasoning of any kind, that is, "Torah-not-for-its-own-sake":

42 Yeshayahu Leibowitz, "Lishmah and Not-Lishmah," in Goldman, *Judaism*, 73–74.

43 "We characterize Judaism as an institutional religion, but not merely in the sense that it comprises institutions. That is characteristic of all religions. The description is intended to reflect the peculiarity of Judaism, for which the institutions of halakhic (law) practice are constitutive. Apart from them Judaism does not exist." Leibowitz, "Religious Praxis," 4 (*Yahadut*, 14). Against separation of form and content see "... the content of Jewish faith – the stance of man before God as Judaism conceived it – can be externalized in one form only, the Halakhic system. The belief that the substance of Jewish faith can be retained when Halakhah is adapted to human needs [material or spiritual] ... is mistaken. The essence of Jewish faith is consistent with no embodiment other than the system of Halakhic praxis." Leibowitz, "Religious Praxis," 8.

44 Leibowitz, "Lishmah and Not-Lishmah," 77. See also Avi Sagi, "הגות יהודית לנוכח המודרנה," in Avi Sagi, ed., ישיעהו ליבוביץ: עולמו והגותו (Jerusalem: Keter, 1995) 172 (hereafter Sagi, *Yeshayahu Leibowitz*).

Abraham is put to the test when fulfillment of the divine demand requires that he renounce all human values; not merely personal values such as those involved in the relationship of a father to his only son, but also promises bearing on his seed for all generations to come. He is expected to forego the covenant of Pieces.⁴⁵

Indeed, Abraham's ultimate sacrifice in the act of *ʿaqedah* does have moral, spiritual and existential dimensions, but there is an anti-utilitarian and, in a broad sense, anti-political move in this act, as Leibowitz notes, "He is expected to forego the covenant of Pieces," that is, to forego the divine promise, *To thy seed have I given this land, from the river of Egypt to the great river Perat . . .* (Gen 15:18). Therefore, this acts as the ultimate model of the elevation to the perfection of faith, in which worshipping God is the total negation of secular politics as well. The threefold paradigm of the "unnatural" status of the Law determines Leibowitz's interpretations of the biblical and halakhic-rabbinic traditions, as well as what is essentially Jewish and what is not. This paradigm provides a criterion to judge that which deviates from the pure essence of Judaism. For example, Leibowitz rejects both the kabbalist and Reform traditions as distortions of the essence of Judaism:

... the Kabbalah . . . which converted the obligation imposed upon the Jewish people into a vocation affecting the cosmos and God Himself. . . . Reform Judaism is the second historical distortion of the Jewish religion. For the service of God through Torah and Mitzvot as the end of religion, the Reform movement substitutes . . . an end the Jewish people is destined to attain. . . . Reform . . . assigns to Judaism a human, mundane vocation, "to be a light to the nations." Accordingly, it adapts the Mitzvot in ways that seem most appropriate to this end, and even abrogates them when they seem superfluous or dysfunctional to that vocation.⁴⁶

Maimonides, on the other hand, stands as the emblematic paradigm of all that is essential to Judaism:

Maimonides is the most powerful image in the history of Judaism, from the age of the Patriarchs and the Prophets to the present age, of a knowledge of God based on religion and faith . . . a great man of faith, whose faith found its embodiment in the worship [service] of God.⁴⁷

⁴⁵ Leibowitz, "Fear of God in the Book of Job," 49.

⁴⁶ Yeshayahu Leibowitz, "The Religious and Moral Significance of the Redemption of Israel," in Goldman, *Judaism*, 111–14.

⁴⁷ Leibowitz, *The Faith*, 14. In the Hebrew source, בעבודת השם means the execution of God's commandments, or service of God.

While Leibowitz incorporates Maimonides when discussing a wide range of subjects, we confine ourselves here mainly to Leibowitz's use of the Maimonidean concept of Law. In this context, Leibowitz claims that only through the Law can the religious person elevate himself through correct worship of God for its own sake, Torah-for-its-own-sake. When referring to the sections in the *Guide* (part III) that present the reasons for the commandments, Leibowitz claims that while, "In the beginning of this section, the mitzvot (precepts; commandments) are a means directed toward some 'purpose'; by the end, they are the purpose itself."⁴⁸ Leibowitz acknowledges that, even according to Maimonides, the Law has functional aspects that fall into the category of "Torah-not-for-its-own-sake." The Law, for instance, has educational and utilitarian functions, such as promoting virtuous behavior and the correct social and political organization of human society. But this is not the essence of the Law. Leibowitz quotes Maimonides from the *Guide* (III:51) where, "Suddenly, the whole spirit of the interpretation is altered," and we read:

Know that all such religious acts as reading the Law, praying, and performance of all other precepts serve exclusively as the means of causing us to occupy and fill our mind with the precepts of God, and free it from worldly business; for we are thus, as it were, occupied with God, and not with that which is other than He.⁴⁹

At first, Maimonides presents the commandments as instruments used to teach correct belief in the Oneness of God. For that reason the Law has all the elements of moral and social codes. But when the believer rises to the level of faith, "he finds out that this faith has no other practical expression except the worship of God through fulfillment of these commandments themselves."⁵⁰

The commandments, which function as the means to achieve an end, that is, the correct belief in the Oneness of God, become the practical expression of the correct belief itself. Leibowitz views Maimonides' doctrine of *halakhah* as a feedback mechanism of sorts, designed to educate a person toward the highest kind of faith. The inner and supreme reason for the commandments, "the world of the Halakhah, is not a means: it is the end itself."⁵¹ Leibowitz's interpretation of Maimonides' philosophy of *halakhah* is aligned completely with his own opinions regarding the essence of Judaism and the role of *halakhah*.

48 Leibowitz, *The Faith*, 24.

49 Leibowitz, *The Faith*, 24.

50 Leibowitz, *The Faith*, 24. See also his essay, "קריאת שמע," in *Emuna* 17. On the educational aspects of this imperative see Ari Bornshtein, "קריאת שמע: האדם לפני," *Hagut bahinukh hayehudi* 3–4 (2002) 151–55.

51 Leibowitz, *The Faith*, 25.

LEIBOWITZ AND STRAUSS: A COMPARISON

The question of knowledge. Both Strauss and Leibowitz claim that the dichotomy between Maimonides the philosopher and Maimonides the man of *halakhah* is incorrect and misleading, but for different reasons. For Strauss, the philosopher/king/prophet descends into the Platonic cave and produces a myth that serves as the source of political theology, as the blueprint for laws given to society. This Law has an esoteric aspect designed to help the talented few rise up toward the light outside of the cave. Herein lies the core of the interplay between philosophy and law. According to Strauss, this is exactly the Mosaic paradigm that Maimonides executes in his *Guide* and code, *Mishneh Torah*. Therefore, for Strauss, there is a continuum of progress from the level of the philosopher upward to the level of the prophet, after which the person resumes his/her leadership role to either provide new laws or keep and develop the existing laws.

Leibowitz, on the other hand, understands Maimonides to be the paradigm of the separation between the philosopher and the prophet. For Leibowitz, the two types of knowledge, scientific-philosophical and divine, differ radically, because philosophical knowledge does not serve as the basis for *amor Dei intellectualis*. Philosophers do not rise to the level of prophet; rather, the two types stand in opposition to one another. Maimonides represents the pinnacle of religious *intellectio Dei* from biblical times and onwards. He is not a philosopher but rises above philosophy:

... the philosopher aspires to knowledge; Maimonides aspired to knowledge of God. These two terms [kinds of knowledge; H.R.] are not interconnected, nor can they be derived from each other, and do not complete each other – but the later annuls the former. ... [Maimonides] does not aspire to knowledge for its own sake and is not interested in it at all ... because he does not attribute any importance to the created world, the physical and spiritual alike, including man and his moral, material and intellectual accomplishments. Maimonides negates all essence and meaning from reality when it serves as the object of (philosophical) cognition, and therefore from cognition itself.⁵²

In this reading, Maimonides represents the religious consciousness that empties itself of any values other than that of total devotion to and love of God. Since only God truly “is” or exists, everything other than Him is not. At this level, one can only “know God” through negative attributes:

Know, ... that the differences of degree between those who apprehend are

⁵² Leibowitz, “הרמב”ם: האדם האברהמי,” 20.

very great indeed. For the thing of which attributes are predicated becomes more particularized with every increase in attributes that are predicated of it, and he who predicates these attributes accordingly comes nearer to apprehension of the true reality of things in question. In a similar way, you come nearer to the apprehension of Him, may He be exalted, with every increase in the negations regarding Him; and you come nearer to that apprehension than he who does not negate [attributes of Him].⁵³

Leibowitz explains Maimonides' system of negation as encompassing not only the negation of any positive attribute of God, but the negation of any existence and meaning attached to the created world, including material, moral and intellectual values, even cognition itself. Because only He truly exists, and He is totally other than the created world, all attributes of existence attached to the created world are borrowed and do not describe the core essence of being itself. This is the intellectual core of the Abrahamic consciousness, of the act of the *'aqedah* (The Binding of Isaac), which has now become identical with Maimonides' teaching of the negative attributes.⁵⁴ Therefore, from Leibowitz's point of view, any attempt to claim that the highest Abrahamic (prophetic) disposition utilizes or integrates philosophic and scientific knowledge disregards the Maimonidean doctrine of negative attributes.

The question of Prophecy and halakhah (Law). In spite of the fact that both Leibowitz and Strauss see *halakhah* as a major component of Maimonides' thought, they completely disagree about the way *halakhah* functions in Maimonidean thought.⁵⁵ Strauss considered Maimonides' core doctrine to be prophecy, with *halakhah* serving as sets of laws that create the atmosphere in which the perfect city can exist, or else as enabling the intellectual elite to live, teach, and elevate their spirits in a city that has not yet achieved perfection. Strauss differentiates between "the true science of the law [which] is concerned with what man ought to think or believe" (the main motif in the *Guide*), and the *fiqh*, "which is the exact determination . . . by way of deduction from the authoritative statements of the law, of those actions by means of which man's life

53 For the Maimonidean sources see Maimonides, *Guide*, 1:59 (ed. Pines, p. 138) and the complete section in the *Guide*, esp. 1:51–60.

54 Leibowitz, "הרמב"ם: האדם האברהמי," 20, col. B, and 21, col. A. For Maimonides' discussion of "negative attributes" see Maimonides, *Guide*, 1:51–60. For Leibowitz, the *Guide* and the *Mishneh Torah* are "one integral whole": "... without the philosophical principles which found their expression in the *Guide*, Maimonides could hardly have dedicated his life's work to the *Yad* [*Mishneh Torah*]; and without the background and world of the *Yad* [*Mishneh Torah*], he could not have written a single chapter of the *Guide*." Leibowitz, *The Faith*, 15.

55 See Leibowitz, *The Faith*, 14–15; Strauss, *Persecution and the Art of Writing*, 42–46.

becomes noble . . .”⁵⁶ It seems that while the true science of the Law is perceived as unqualified truth, a fixed objective, the *fiqh* is contingent. But the true science of the Law is learned through philosophical investigation of the created world – in the case of a religious system, by learning the ways God acts in the world, His “active attributes.” The philosophical investigation of creation is, therefore, the core of Maimonides’ philosophy, both of the Law and the detailed legislation of the laws that make up *halakhah*.

Leibowitz refers directly to Strauss in his short, dense article, “Maimonides the Abrahamic Man.”⁵⁷ He agrees with Strauss that Maimonides is not a philosopher of religion or a religious philosopher, but he opposes Strauss’s Platonic interpretation of Maimonides’ work. Leibowitz claims that Strauss fails to grasp the lengths to which Maimonides the halakhic legislator (*poseq*) goes in order to elevate *halakhah* to the existential atmosphere of the endless quest to know God.

Leibowitz does not break with *halakhah*. His concept of Torah-for-its-own-sake reaffirms the supremacy of the Law as such (as well as the particular laws implemented in any given case), both as a system of thought and in its capacity as particular laws. The ideal believer does not imitate Moses, or ascend to the level of prophecy that enacts laws. He/she uses the Mosaic Law, as it is developed by *halakhah*, to ascend to Abraham’s divine existence, that is, to a trans-human level that transcends all human ends. Constructing life according to *halakhah* means creating a sphere of holiness, that is, a sphere of fulfilling the commandments for God’s sake and not for humans’ sake. To grant holiness to things human or corporeal is idolatry.⁵⁸ Directed by the Abrahamic archetype, Leibowitz waits for a renewal of *halakhah* as a project of the whole Jewish community (*kelal yisra’el*).

Abraham versus Moses: Two role models. Thus, Leibowitz reveres Abraham as the ultimate model of elevation to the perfect stage of faith, because his worship of God represents the total negation of everything worldly and human. In this ultimate stage of belief, human will and ethics are completely suspended in favor of compliance with Torah-for-its-own-sake.⁵⁹

According to Leibowitz, the existential moment stands in opposition to that

56 For Strauss the divide between the “Law” and the “True Science of the Law” is reflected in the theological-political predicament, and corresponds to the difference between the *Guide* and the *Mishneh Torah*, Strauss, *Persecution and the Art of Writing*, 39.

57 Leibowitz, “הרמב”ם: האדם האברהמי,” 20.

58 Leibowitz, *Yahadut*, 31–32.

59 See Leibowitz, “Religious Praxis,” 17 and 19, cited above in the text at n. 38 and in n. 39. On the theme of Abraham and the comparison with Kierkegaard, see Sagi’s discussion in the first chapter of his *The Jewish-Israeli Voyage*; see also David Hartman’s analysis of Leibowitz’s concept of prayer: “According to Leibowitz, prayer in Judaism has nothing whatever to do with the indi-

proposed by Strauss. Strauss integrates the Maimonidean doctrine of prophecy with the Nietzschean "will to power." The superman reaffirms nature and prescribes new meaning, faith, myth and law according to nature. This law takes the form of political theology. Leibowitz, to the contrary, teaches that all people must strive to become like Abraham and, in an existential and eternal replay of the *ʿaqedah*, completely erase the human will when called upon by God. Anything else would constitute an attempt to impose a moral justification and explanation onto the commandments, and so put religion in the service of man and shift from theocentric law toward ethnocentric law, which would constitute idolatry.⁶⁰

Leibowitz emphasizes Abraham's centrality in Maimonides' thought, and in so doing lowers the stature of Moses.⁶¹

Therefore Maimonides could say: "Every man must strive to become righteous as Moses our rabbi," but Maimonides saw as the outstanding persons of the human race those who are "at the merit level of Abraham our father who was referred by God as 'thy lover.'"⁶²

vidual's personal human situation . . . Prayer is a mitzvah and as such it means that you are duty bound to serve God; you are obligated to make God the center of your universe," Hartman "Prayer and Religious Consciousness," 110–11.

60 See also Moshe Halbertal, "ישעיהו ליבוביץ: בין הגות דתית לביקורת חברתית," in Sagi, *Yeshayahu Leibowitz*, 221–22 (hereafter Halbertal, "Yeshayahu Leibowitz").

61 See also Leibowitz's analysis of Maimonides' doctrine of divine providence: ". . . individual providence is not a result of the adherence to God or reward for cleaving to Him. Individual providence is identical with this adherence. . . . Maimonides' faith in providence is the faith of the first believer, who 'believed in God' and went with his son to the Aqedah," Yeshayahu Leibowitz, "Divine Governance: A Maimonidean View," in Goldman, *Judaism*, 58–59.

62 Leibowitz, "הדמיון: האדם האברהמי," 21, col. A. In fact, Leibowitz synthesizes two citations from different places in Maimonides' writings, and creates his own Maimonidean teaching. For the reference to Moses in the *Mishneh Torah*, see Laws of Repentance chapter 5: law 2, and to Abraham in chapter 10: law 2.

In this context we can understand his imperative to differentiate between the Greek term, "ethics" and the Hebrew word, *musar*. In Hebrew, he claims, there is no word for "ethics," and so when Maimonides referred to that realm of discourse that he called "the teaching (and law) of opinions" (*torat hade'ot*), he did not use the Hebrew term *musar*, which has been wrongly translated as "ethics." In fact, pre-modern Jewish writings (including the Bible) do not include the category of moral literature, such as those termed books of "ethics" in the West. Thus, the Hebrew genre of ethical or moral literature (*sifrut musar*) is wrongly defined as ethical literature, when it should instead be understood as a genre that teaches the correct belief, that is, the explication of the duties and imperatives of the human being toward God. When referring to one of the best known *musar* books, *Mesilat Yesharim*, written by Moses Hayyim Luzzatto (RaMḥa"l), Leibowitz claims that its subject matter is not ethics, but the duties of the human being regarding the correct way to worship God. See Yeshayahu Leibowitz, שיחות על מסילת ישרים של הרמח"ל (n.p.: s.p., 1995) 27–28.

It is clear that, for Leibowitz, the figure of "Moses" is part of the Abrahamic archetype. Ideally, however, Moses should be completely absorbed into the Abrahamic paradigm. There is no faith without commandments, no "Abraham" without "Moses." But from a Straussian point of view, the "Moses" archetype is the answer given to the improbability of the implementation of the Abrahamic model in history. The "City" needs political philosophers, givers of Law, prophets who can descend into the Platonic Cave.

The implication of the two concepts of Law on the question of Religion and State. For Strauss, the Nietzschean philosophers of the future will break the spell of nihilism and relativism. By completing this gigantic project they will rise above the plane of ordinary human experience and, it is hoped, return with new prophecy, that is, a new, or renewed, political Law embedded in theology and myth. They will follow in the footsteps of Maimonides' Moses, but will return with a different Torah. The whole project depends upon the existence and dedication of supreme individuals and supreme human will. Until then, Strauss demands that humanity continue to evaluate modernity and its break from political philosophy and pre-modern traditions.⁶³

Put differently, and maybe more strongly, Strauss's philosophy questions the modern liberal imperative of a necessary separation between the two spheres of religion and state. Strauss's political theology determines his final judgment in regard to the value of the Zionist project: Political Zionism attempts to solve the Jewish problem by way of national assimilation, in the Jews becoming a "normal" nation like any other nation. In this respect, the Jewish problem is first and foremost a human problem that can be solved by human means. Strauss does not condemn Zionism. The establishment of the state of Israel brought a tremendous relief to the Jews. But he sees the role of Political Zionism in the larger history of Judaism as limited. Political Zionism robs Judaism of its essence. As Strauss says, "The project implies a profound modification of the traditional Jewish hopes – a modification arrived at through a break with these hopes,"⁶⁴ and "The mind [of Political Zionism] was in no way employed, or even the heart was in no way employed, in matters Jewish."⁶⁵

Likewise, Strauss takes on the premise of Cultural Zionism, which recognizes the fact that the attempt to reduce the Jewish problem to a political problem goes against the idea of a nation. A nation is a cultural collective that has

63 As examples of this agenda, one can view Strauss's essays, "What Is Political Philosophy?" and "Political Philosophy and History," collected and reprinted in Strauss, *What is Political Philosophy?*

64 "Preface," Strauss, *Spinoza's Critique of Religion*.

65 Leo Strauss, "Why We Remain Jews," in Kenneth Hart Green, ed., *Jewish Philosophy and the Crisis of Modernity* (Albany: State Univ. of New York Press, 1997) 319.

a body-politic. In response, Cultural Zionism attempts to characterize and interpret Judaism as a culture, which means that Judaism is and always has been a product of human creation. It conserves the essential elements of the Jewish tradition, and then renews and enriches its ongoing creation. But doing so depends upon an examination of Jewish sources, the foundations of the tradition, which contradict the Cultural Zionist perspective. The sources self-consciously declare themselves the product of divine revelation, not human creation. Strauss poses the obvious challenge facing Cultural Judaism: how can a distortion of the foundational element of the tradition still claim to be loyal to that tradition, its continuity and prosperity? He responds that once Cultural Zionism engages in a serious self-examination, it would turn into Religious Zionism. This phase is practically a return to the religion of the forefathers. Religious Zionism is first and foremost a return to the Jewish faith. Zionism is only its secondary level. There is a resultant problem, though: any attempt to solve the Jewish problem by human means will be read as blasphemy by those very Jewish sources from which it draws its justification:

The establishment of the state of Israel is the most profound modification of the *galut* which has occurred, but it is not the end of the *galut*: in a religious sense, and perhaps not only in the religious sense, the state of Israel is a part of the *galut*. Finite, relative problems can be solved; infinite, absolute problems cannot be solved.⁶⁶

The theological-political predicament is eternal and the *galut* is its everlasting testament. The modern liberal attempt to separate religion from the political and public sphere is futile. Judaism both testifies to and serves as a symbol of that futility. As Eugene Sheppard notes, even during the Weimar days when the young Strauss's "political Zionism militated against any valorization of *galut*, he nevertheless questioned whether the call for a negation of *galut* amounted to a call for the negation of an essential component of Jewish existence."⁶⁷

Since Leibowitz presents *halakhah* as a total negation of the secular sphere, it is no surprise that he promotes the total separation of religion and the state:

But can there be a state which embodies Judaism? I would like to offer a negative answer. I do not accept the foolish notion that the Torah reflects the genius of the Jewish people. If one rejects the folly of the Torah as the creation of the Jewish people and sees it instead as divine, one must

66 See "Preface," Strauss, *Spinoza's Critique of Religion*, 6; and his "Why We Remain Jews," in Green, *Jewish Philosophy and the Crisis of Modernity*, 339.

67 Eugene R. Sheppard, *Leo Strauss and the Politics of Exile: The Making of a Political Philosopher* (Waltham: Brandeis Univ. Press, 2006) 43.

appreciate that the Torah cannot be fulfilled. A divine Torah cannot be fulfilled by man. It requires a desperate struggle for its fulfillment, a struggle which constitutes a perennial task. . . . If religion has a function, it is to place man's limited values in true perspective. The state has no value; it is only an instrument serving man and his goals. . . . To conceive of the state otherwise is to transgress the commandment, "Thou shalt not take the name of God in vain" for the state is not sacred.⁶⁸

But one has to note that Leibowitz demands the separation of religion and the state based on two arguments, which are themselves based on a single presupposition, that *halakhah* serves as the dialectical process through which humanity can move from Torah-not-for-its-own-sake to Torah-for-its-own-sake. Therefore, 1. any connection between *halakhah* and the state that is meant to serve the base political sphere is considered idolatry,⁶⁹ and 2. it is significant that *halakhah* developed in a context in which the Jews were deprived of political independence. Leibowitz holds out the possibility that *halakhah*, in all its political legislation, represents a description of an ideal and utopian society, but that ideal demands an eternal struggle because of its messianic nature. It cannot be realized or implemented in historical time, because Leibowitz rejects the notion of the messianic age actually coming to fruition.⁷⁰ "The Messiah is essentially he who always will come, he is the eternal future. The Messiah who comes, the Messiah of the present, is invariably the false Messiah."⁷¹ It must be noted that Leibowitz does, however, leave the door open for the possibility of a renaissance in the halakhic legislation of a Jewish State.⁷² In this scenario, he demands that any halakhic progress develop according to traditional halakhic procedures. Such a state would be the expression of Torah-for-its-own-sake. Since Leibowitz's complete negation of the connection between religion and the state is part of his attempt to combat false messianism,⁷³ his concept of Torah-for-its-own-sake reaffirms the supremacy of halakhic Law, both as a system of thought and as a set of particular laws. Leibowitz went from promoting the project of building a halakhic system of government to calling for a separation between religion and the state in Israel. It is my opinion that that change does not denote a philosophical/ideological change but a realistic assessment of the damage inflicted on the Jewish religion by its involvement in the political sphere in Israel. It has to be emphasized that there was a point, early on, when

68 Leibowitz, "The Jew in His Community," in Goldman, *Judaism*, 209–10.

69 See for example, "סיכום וסיכור," *הפרדת הדת מהמדינה*, in Leibowitz, *Yahadut*, 157.

70 "Separation of Religion and State," in Leibowitz, *Yahadut*, 195–96. Leibowitz also includes in this judgement the section of the *Mishneh Torah* devoted to "Kings" in the Book of Judges.

71 Leibowitz, "Lishmah and not-Lishmah," in Goldman, *Judaism*, 72.

72 Leibowitz, "Jewish Identity and Israeli Silence," in Goldman, *Judaism*, 199–206.

73 Leibowitz, "Redemption and the Dawn of Redemption," in Goldman, *Judaism*, 126.

Leibowitz called for a “renewal of *halakhah*” that would provide direction to the unprecedented reality of a Jewish State. He viewed this task as a struggle that would encompass “years, or generations, or hundreds of years, and maybe even an eternal struggle, for it might well be that the Torah can not be implemented exactly because it is divine — the whole meaning of ‘implementing the Torah’ is but the eternal struggle for its implementation.”⁷⁴ In his 1953 lecture “Renewal of Halakhah as a Legal System for the State of Israel,” Leibowitz already set forth the tension between religion and the state.⁷⁵

Both Strauss and Leibowitz were educated in Germany between the wars. Both were fortunate enough to leave Germany prior to the Second World War. While Strauss relocated to the United States, Leibowitz settled in Israel. It can be said, though, that both thinkers never fully adapted to their new environments and cultures, nor did they conform to the ideologies that dominated the worlds in which they lived. Both in fact stood in opposition to their new cultures. Both lived their intellectual lives as critics of the *Zeitgeist* that celebrated Judaism in terms of the secular humanist ethos and Jewish nationalism respectively. Both were prophets who stood at the gates of the city and hammered away against what they identified as the wrong-headed and dangerous conventions of their fellow citizens. They tried to prod their audiences into questioning the assumption that modernity means all-embracing progress and that the modern phase of Judaism, a Judaism that incorporates the “best fruits of modernity and humanism” is better and wiser than its earlier incarnations; that it is the great product of the dialectic between modernity, human progress and, Jewish tradition.⁷⁶

74 Yeshayahu Leibowitz, “הלכה תורנית מחדשת כחוקה למדינת ישראל,” in his, *תורה ומצוות בזמן הזה: הרצאות ומאמרים 1953–1943* (Tel-Aviv: Masadah, 1954).

75 Leibowitz, “הלכה תורנית מחדשת,” 144–45. Sagi, *The Jewish-Israeli Voyage*, 51, also does not accept the claim that Leibowitz had changed his opinion, but claims instead that this is an immanent tension in Leibowitz’s thought. He attributes this tension to Leibowitz’s concern in regard to the “demonic aspects that are found in the political sphere.” See also Halbertal, “Yeshayahu Leibowitz,” 221–27. It is wrongly thought that the change in Leibowitz’s teaching in regard to the separation of religion and the state in Israel took place in 1954, probably after “the horrific acts” of retaliation (and revenge) in the Arab village of Kibiyeh, and based on his article “העם, הדת, והמדינה,” reprinted in his book, Leibowitz, *Yahadut*. The reprinted version mistakenly dates the article to 1954, but recently, Hanah Kasher has dated the publication year of the article to 1958 and dates Leibowitz’s “change” of opinion in regard to the question of religion and state to 1957 when his article “היהדות, העם היהודי ומדינת היהודים,” was originally published in *Beterem* (1957); reprinted in Leibowitz, *Yahadut*, 235–42. See Hanah Kasher, “בין, שלא לשמע: לעבודה זרה,” in Aviezer Ravitzky, ed., *Yeshayahu Leibowitz: Between Conservatism and Radicalism: Reflection on His Philosophy* (Tel-Aviv and Jerusalem: Van Leer Institute and Hakibbutz Hameuchad Publishing House, 2007) 266, n. 43.

76 For Leibowitz, see David Ohanah, *The Rage of the Intellectuals: Political Radicalism and Social*

Strauss took the route of political philosophy while Leibowitz concentrated more on particular Jewish sources, but both took Maimonides as their model, as the criterion to evaluate modernity and the lens through which modernity and the modern concept of religion are to be judged.

As is clear, each student of Maimonides interprets the Maimonidean doctrine of the Law differently and then bases his own definition of Judaism and its attendant theologies on that interpretation. To what extent their equally essentialist concepts of Judaism were determined by their overall worldviews or philosophies and to what extent they can stand as reliable representations of Judaism itself remains open to interpretation. Such readings would, naturally, be influenced by the biases and the worldviews of those who look to them for philosophical guidance. Likewise, the question of their respective readings of Maimonides, and more specifically the concept of the Law in Maimonides, remains open. Any claim that Strauss and Leibowitz selectively read Maimonides through the lens of their own worldviews can be challenged by a meticulous, comparative study of this theme — among modern Jewish thinkers and scholars of Maimonides. Such research might bring us closer to understanding how the idea of the Law functions in Maimonides, but more importantly to an understanding of its role within modern Jewish thought and scholarship. As this paper has begun to show, Maimonides and his concept of the Law can serve as the mirror through which a critical examination of the characteristics of contemporary Jewish thought can fruitfully proceed. Both Strauss's and Leibowitz's interpretations of Maimonides and their Maimonidean concept of Judaism as Law pose a major challenge to any modern Jewish theologian or philosopher who tries to harmonize Maimonides with modern liberal and democratic worldviews. As I have shown, one cannot build modern liberal Maimonideanism without first refuting both Strauss's and Leibowitz's mutually exclusive interpretations of Maimonides and their Maimonides-based claim that Judaism is first and foremost — law.

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Criticism in Europe and Israel (Tel-Aviv: Hakibbutz Hameuchad, 2005) 155–56 (Heb.); and his, “ציונותו של ישעיהו ליבוביץ,” *Kivunim* 8 (1995) 162. For Strauss, see “Editor’s Introduction” in Green, *Jewish Philosophy and the Crisis of Modernity*, 6–8.

Life of the World

Beyond Mind/Body Dualism to Embodied Emergence

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This paper will consider the dominant system of ideas — a dualistic metaphysics that dichotomizes mind and body — explicate its inadequacy and harmfulness for the present, and advocate a different nexus of ideas to allow the continuing conversation about ourselves, our place in the world, and a spiritual sense of unity and meaning to emerge in a way that does not require us to deny what we know from other sources, denigrate our world and ourselves, or maintain a false hierarchy based on gender. The solution that I will sketch integrates three mutually-supportive sources: cognitive science, metaphor theory, and panentheism and process theology. *Cognitive Science*: Our sensorimotor system interacts with the world in a way that cannot be reduced to objective or subjective, but is interactional, relational, and embodied. *Metaphor Theory*: Broadening the understanding of metaphor beyond poetry and literature, abstract human thought and speech is primarily, if not always, metaphoric — that is to say, interactional, relational, and embodied. *Panentheism and Process Theology*: Transcending the dichotomy of transcendent unity (philosophical theism) versus immanent, deterministic totality (pantheism), I will articulate an understanding of God as both transcendent *and* immanent, as the life of the world *and* its source, with real creativity and freedom for humanity and all of creation itself.

“Plato is Philosophy, and Philosophy is Plato,” observed Ralph Waldo Emerson, “. . . out of Plato comes all things that are still written and debated among men of thought.”¹ In a famous aphorism, the philosopher and mathematician Alfred North Whitehead quipped, “The safest general characterization of the European philosophical tradition is that it consists of a series of footnotes to Plato.”² The brilliance of the dominant system,³ an interpretation of some of Plato’s

1 Ralph Waldo Emerson, “Plato; or, the Philosopher,” in “Representative Men,” Chapter 2, *Essays and Lectures* (New York: Library of America, 1983) 633.

2 Alfred North Whitehead, *Process and Reality: An Essay in Cosmology*, eds. David Ray Griffin and Donald Sherbourne (New York: The Free Press, 1978) part 2, chap. 1, sec. 1.

3 In fairness, a distinction should be maintained between the thought of Plato himself and the distillation of his far-flung ideological disciples. His philosophy, embedded in narratives, myths, and dialogue, is a much more supple and nuanced collection of images, suggestions, and inquiries than the more literal prose of his followers. For an important reflection on the continuing fruitfulness of Plato himself, in contrast to the ideological rigidity of much of the “unplatonic

writings filtered through Cartesian dualism and its numerous reworkings throughout later Western thought, created invaluable insights whose harvests we continue to reap. That dominant tradition is committed to abstract reason and its own concepts and logical axioms as the primary tool for discovering the reality that lies behind human sense experience, which is generally judged to be non-material, eternal, and unchanging. What reason understands can then be expressed in clear and distinct ideas that can, in turn, be formulated in scientific and objective, verifiable language.

Before I explicate the problems with the dominant system in its various expressions, I want to salute Plato and his numerous disciples. Any ideological system that lasts for 2,400 years, and that can unify thinkers as diverse as the ones we will mention is self-evidently a remarkably vibrant set of ideas. That way of thinking pervades many religious texts in Judaism, Christianity, and Islam, as well as many Eastern documents, and it certainly percolates through much of modern and medieval Jewish philosophy; it unifies the scientific worldview that it made possible. So, in considering why we need to move beyond the metaphysics that were rooted in Plato, we should also remember the value of retaining aspects of that dominant set of ideas, but in a non-literal, metaphoric context.

In the realm of theology, this cluster of assumptions, methods, and conclusions is generally labeled “philosophical theism” or “classical theism,” but that terminology itself reflects a normative elevation that is unwarranted. For a religious Jew, “classical,” in the sense of authoritative or exemplary, should be reserved for Tanakh and Rabbis, both as a matter of faith and of historical priority. I will call this cluster of ideas “dominant” to recognize that most medieval and contemporary thinkers – religious and secular – work from within this framework. “Dominant” is a matter of power, control, and consensus, not necessarily of utility, integration, or illumination.

The benefits of the dominant ideas, while considerable, come at a very steep cost, and are no longer serving the useful function they may once have. This paper will consider the dominant system of ideas, explicate its inadequacy and deleteriousness for the present, and advocate a different nexus of ideas to allow the continuing conversation about ourselves, our place in the world, and a spiritual sense of unity and meaning to emerge in a way that does not require denying what we know from other sources, does not require denigrating the world and our bodies, does not maintain a false hierarchy based on gender, nor does it create an intellectual context in which we seek to “win” supremacy for our own ideas at the expense of honoring the worthy ideas and commitments of others. The dominant set of interlocking, mutually-reinforcing ideas is:

Platonism” of his followers, see Daniel A. Dombrowski, “Hartshorne and Plato,” in Lewis Edwin Hahn, ed., *The Philosophy of Charles Hartshorne* (La Salle: Open Court, 1991) 465–87.

The notion of objective categories that relate to each other through a transcendent, universal reason that is independent of material reality, including our brains or bodies.

These truths are eternal, and to the degree that they are true, unchanging.

God is the supreme example of this transcendent, spiritual reality vis-à-vis the cosmos, as are our souls vis-à-vis our bodies.

God is simple and unchanging and eternal. Our souls are similarly eternal.

Our concepts correspond to these objective categories and their relationships.

Reason is our ability to partake of this objective, transcendent reality (hence, reason is disembodied).

In many religions, the role of reason as link to the eternal divine is manifest as and/or shared with Revelation.

These paradigms, to the degree that they track reason, are independent of brains, bodies, or cultures, and are objectively true for all times, places, and people.

This capacity for objective reason is the essence of our humanity (and remains, at its core, class-free, gender-free, and culture-free).

Transcendent, universal reason is distilled through language to verbalize truth absolutely.

The essence of our being, therefore, is disembodied soul, placed within a body, using reason and revelation to return to a state of pure spirit.

This cluster of commitments has been shared, in greater or lesser degree, by the many specific systems that the dominant system has generated, from the religious to the secular, the theist to the non-theist, across the ages. Its central images and insights are premised on scientific findings we no longer share and ethical convictions we actively reject. The very pervasiveness of this model renders it nearly invisible, as people mistake a specific set of images and one particular narrative for objective truth. Although compelling, this dominant metaphysics fails for three primary reasons: insoluble philosophical paradoxes, violation of what we know of the world from the sciences (physics, biology, cognitive psychology), and a resultant recognition of how human mind and language really function to articulate and communicate ideas. In this paper, we will consider the invisible structures that constrain the way we think of the cosmos, of knowledge, of religion. Those dominant structures of thought and language coerce us in ways that are largely unhelpful, and limit our understanding of

religion in ways that we do not believe, but we think we *should* believe because that is what our language coerces. This paper is an attempt to try to make the invisible explicit, to focus on what the dominant imagery of religion is, and why it is broken beyond repair. We will then sketch a better alternative to the regnant and invisible Neoplatonism, an approach that is both more intellectually integrated, which we can actually believe, and which does not require us to suspend what we know about the world. The solution that I will sketch integrates three mutually-supportive sources:

Cognitive Science. This field looks at how our sensorimotor system interacts with the world in a way that cannot be reduced to either objective nor subjective, but is irreducibly interactional, relational, and embodied.⁴

Metaphor Theory. Understanding conceptual thought as metaphoric, analogic, and a matter of conceptual blending, the use of language is understood as applying conceptual metaphors – derived from the way the body processes information – to more abstract experiences and ideas. Broadening the understanding of metaphor beyond poetry and literature, this field argues that abstract human thought and speech is primarily, if not always, metaphoric (speaking of one conceptual domain in terms of another), that is to say, interactional, relational, and embodied.⁵

Panentheism and Process Theology. This philosophical framework transcends the dichotomy of simple transcendent unity (philosophical theism) versus complex, immanent deterministic totality (pantheism) to articulate an understanding of God as both transcendent and immanent, as the life of the world *and* its source, with real creativity and freedom for humanity and all of creation itself.⁶ This theology articulates a view that is interactional, relational, and embodied.

Each of these three pillars moves beyond a dichotomy of subjective/objective, either/or, feeling/fact, to embrace an integrated relational way of relating to the world, as part of that world. Each in its own way contributes to a new integration of our means of understanding the world in which we find ourselves, our relationship with the rest of creation, and a new understanding of our relationship and manifestation of the divine that integrates what we learn from science, from postmodern trends in philosophy, and from theories of metaphor in

4 Relying on the work of Michael Anderson, Justin Barrett, Gerald Edelman, Mark Johnson, George Lakoff, and Tim Rohrer, among others.

5 Relying on the work of Gilles Fauconnier, Mark Johnson, Andrew Ortony, Sheldon Sacks, and Mark Turner, among others.

6 Relying on the work of Alfred North Whitehead, Morris Cohen, Charles Hartshorne, David Ray Griffin, Catherine Keller, and Philip Clayton, among others.

language. What is original to this exercise is not so much the component parts, but the integration of the three. In addition, this embodied approach is more Hebraically authentic; meaning, it is found in Tanakh and in Jewish sources more frequently and with greater coherence and beauty than the dominant alternative.

We begin with the dominant system, explicating that structure and what it implies. Then we will examine the assumptions that undergird it, and then finally we will explore why it is so problematic that it is time for us to transcend the dominant system.

THE DOMINANT SYSTEM

The earliest roots of what became a materialist dualism in early modernity began with those elements of Plato's thought that were integrated through Aristotle into a medieval philosophical system. According to Neoplatonism, that is real which is ideal.⁷ Anything physical is, by definition, an inferior and flawed version of perfection. Perfect pertains to the World of Forms, it pertains to the world of concepts, which is ultimately real in a way in which things are not. "It is clear that the intellect is the most noble of all substances, of the highest degree and loftiest rank, and the one nearest to 'innovation' and 'making-anew' [creation from nothing]..."⁸ This primary dichotomy – the bifurcation in Platonic thought – divides spirit (non-corporeal, non-material, and good) from those elements that are corporeal or material, which are inferior, imperfect, ephemeral, and bad:

The soul is most similar to what is divine, immortal, intelligible, uniform, indissoluble, unvarying, and constant in relation to itself; whereas body, in its turn, is most similar to what is human, mortal, multiform, non-intelligible, dissoluble, and never constant in relation to itself.⁹

7 Many academic distillations of Platonic and Neo-Platonic thought exist. In a general context, see "Plato, Platonism, and Neoplatonism," in Paul F. Grendler, ed., *The Renaissance: An Encyclopedia for Students* (4 vols.; New York: Charles Scribner's Sons, 2004) 3:174–76; Kimberly Sims, "Neoplatonism," in Mayanne Horowitz, ed., *New Dictionary of the History of Ideas* (6 vols.; Detroit: Charles Scribner's Sons, 2005) 5:1823–24; Mary Clark, "Neoplatonism," in Lindsay Jones, ed., *ER* (2005) 10:6474–76; and Maria Luisa Gatti, *The Cambridge Companion to Plotinus*, ed. Lloyd P. Gerson (Cambridge: Cambridge Univ. Press, 1996) 10–37. In a Jewish context, some of the best are: Tamar M. Rudavsky, "Medieval Jewish Neoplatonism," in Daniel H. Frank and Oliver Leaman, eds., *History of Jewish Philosophy* (London and New York: Routledge, 1997) 149–87; Isaac Husik, *A History of Mediaeval Jewish Philosophy* (Philadelphia: Jewish Publication Society, 1948); Colette Sirat, "The Neoplatonists," in her *A History of Jewish Philosophy in the Middle Ages* (Cambridge: Cambridge Univ. Press, 1999) 57–112; Lawrence V. Berman, "Plato and Neoplatonism," *EncJud* (2007) 16:226–27; Joel Kraemer, "Neoplatonism," *EncJud* (2007) 15:84–86.

8 Isaac Israeli, Alexander Altmann, and Samuel Miklos Stern, *Isaac Israeli: A Neoplatonic Philosopher of the Early Tenth Century: His Works Translated with Comments and an Outline of His Philosophy* (London: Oxford Univ. Press, 1958) 85–86, as cited by Sirat, *Jewish Philosophy*, 61.

9 Plato, *Phaed.*, 70, 80b.

What is ideal/spirit is simple, static, and eternal. What is material/carnal is complex, dynamic, and ephemeral. Plato famously uses the parable of a cave to illustrate the priority – ontological and epistemological – of the ideal over the physical. In the cave, seeing only the shadows cast on the wall by a flame, the cave dwellers confuse the flickering shadows with real images. And taken into the sunlight, they are blinded by, and mistrustful of, reality. Subject to change and to imperfection, material reality is the drab shadow in the cave. The true wisdom consists in attaching one's mind to timeless, unchanging form, existence distilled to its essence:

The capacity for knowledge is present in everyone's mind. If you can imagine an eye that can turn from darkness to brightness only if the body as a whole turns, then our organ of understanding is like that. Its orientation has to be accompanied by turning the mind as a whole away from the world of becoming, until it becomes capable of bearing the sight of real being and reality at its most bright, which we're saying is goodness.¹⁰

Note that for Plato, becoming – the dynamic, striving process of creation – is a distraction from being – the distilled, timeless, objective essence of spirit. Spirit made material is always chaotic, multiform, finite. Being is demoted by entering the welter of becoming. The cosmos is an imperfect world; because it is material, it has a beginning. It falls apart; it disappoints, and it will have an end. The ideal is a simplified, eternal state of being *qua* being, the “ontos,” in ontology.

Imagine a room full of people all sitting on physical chairs; none of them is sitting on a perfect chair, because once we apprehend the form of a chair and render it physical, introduced simultaneously with its materiality is flawed imperfection. Some of the chairs wobble a little, some of the chairs are already stained; eventually they will be broken. This is true for all physical things. All physical objects partake of beginning, breaking, and ending, all of them. This is true of chairs, and buildings, and people, animals, and universes. The only perfect chair is the idea of a chair. That ideal exists, of necessity, prior (chronologically and ontologically) to any actual, physical chair. One has to have an idea of a chair before being able to build a chair, because otherwise how would one know what to build? The chair of the idea is flawless. It is timeless and perfect. It is because of that prior, perfect conception of a chair that one is able to identify a wide diversity of chairs, even a chair one has never seen before – a chair with wings, a chair with armrests, a chair that is plush and green, or a chair that is Danish, and modern, and red. One identifies them all as chairs because we immediately refer to the Platonic ideal in our minds, and the ideal

¹⁰ Plato, *The Republic*, 1135, 518b.

helps us to say, "That's a chair, that's a chair, or, that one is no longer a chair." Plato affirms that an idea is not simply a figment of human imagination, it is ultimately real, transcendent, universal, and objective; which is why we can all partake of it. And we all have access to this ultimately real world of ideals. Note that "ideal" means two things – pertaining to an idea, and perfect: "the kinds of things which tend to the body are less true and less real than the kinds of things which tend to the mind."¹¹

The ultimate exemplar of the purely spiritual is God. God partakes not at all in any corporeality. God is completely and purely spirit. And God called into being, through the emanation of divine spirit and thought, a physical reality that is, by definition, imperfect. The distance between perfect and imperfect is infinite. It is not a physical distance, but a difference in kind, an infinite distinction. A gap of kind exists between the perfect Creator who is pure *nous*/spirit and the rest of material creation.

Because God is pure spirit, and because what makes something perfect is its conception, God conceives the world into being. The One – which is a perfect Oneness, not necessarily a numerical oneness, but a perfect Oneness and complete Unity – wills the material world into being through thought. And God thinks the world – or, in the Book of Genesis, speaks the world – into being effortlessly because, being pure spirit, creating takes no effort. Because God created the world through thinking, through speech, and we are the crown of that spoken creation, thought and speech become the royal road to the Divine. "The surest proof that man is pre-eminent among creatures is, that he partakes of the state of the angels in regard to speech and understanding. These two are divine and spiritual properties."¹²

Thought, in this system, is the ability to discern a transcendent, abstract universal feature of reality that our minds can access. Thought is universal, and it is disembodied – meaning, the brain is an organ whose function is to access objective truth. True thinking is outside oneself: that is the difference between "correct thinking" and "false thinking." When a person thinks well, utilizes reason well, then all right-thinking people will concur. In thinking properly, one's thought will correspond to the objective reality beyond: either if one is thinking about material things, it will correspond one-on-one to the truth outside the body, or if one is thinking spiritual thoughts, it will correspond one-on-one to the objective reality of the spiritual forms which are the object of our contemplation. Indeed, in this sense, all thinking is an aspect of remembering, as the mind perceives what it always knew but had forgotten:

¹¹ Plato, *The Republic*, 1193, 585d.

¹² Solomon Ibn Gabirol, *The Improvement of the Moral Qualities*, trans. Stephen S. Wise (New York: Columbia Univ. Press, 1901) 30.

If the truth of all things always exists in the soul, then the soul is immortal. Wherefore be of good cheer and try to discover by recollection what you do not now know, or rather what you do not remember.¹³

So, from the dominant perspective, people are an unstable mix. People come from both realms: one source is pure spirit, but the other is earth: "If man's body is the reflection of the universe, his soul is the reflection of the Will."¹⁴ And so we wrestle with these two identities, we struggle with them, and our task in the world is actually one of a journey of return. We are not our bodies. We are our eternal souls planted in our bodies, and our task, as souls, is to conduct ourselves within material creation in such a way that we are then capable of returning to our spiritual home at the end of our carnal existence. As Tamar Rudavsky notes,

... The human soul represents within itself all levels of created existence: functioning as a microcosmic prism, it incorporates elements of matter, form, intellect, and will. The soul is engaged in a perennial journey back to its source, the success of which is wholly dependent upon its moral character.¹⁵

If the soul is really good at fulfilling her earthly assignments, then she not only returns at the end of her journey, but the mind (this is all about ideals!) is capable of gaining access to that spiritually pure state even while the soul inhabits the body. Plotinus, describing the illumination of the enlightened soul while still in this lifetime, exhorts:

When you know that you have become this perfect work, when you are self-gathered in the purity of your being, nothing from without clinging to the authentic man, when you find yourself wholly true to your essential nature, wholly that only veritable Light which is not measured by space, not narrowed to any circumscribed form nor again diffused as a thing void of term, but ever unmeasurable as something greater than all measure and more than all quantity — when you perceive that you have grown to this, you are now become very vision: now call up all your confidence, strike forward yet a step — you need a guide no longer — strain and see. . . . Beauty's seat is There.¹⁶

Recall that, for this dominant framework, the body is contaminated and tran-

13 Plato, *Meno*, 886, 86b.

14 Ibn Gabirol, *Improvement of Moral Qualities*, as cited by Sirat, *Jewish Philosophy*, 72.

15 Tamar M. Rudavsky, "Medieval Jewish Neoplatonism," 172.

16 Plotinus, *The Six Enneads*, trans. Stephen MacKenna (Burdett, N.Y.: Larson Publications, 2004) 1st Ennead, 6th Tractate, "Beauty," 9.

sient compared to the soul. The body is the source of all distraction. The body is the source of drives that corrupt the purity of the soul.

Because the body affords us countless distractions, owing to the nurture it must have; and again, if any illnesses befall it, they hamper our pursuit of that which is. Besides, it fills us up with lusts and desires, with fears and fantasies of every kind, and with any amount of trash, so that really and truly we are, as the saying goes, never able to think of anything at all because of it.¹⁷

The more the soul seeks satisfaction in the allure of this world, the more she becomes addicted to pleasures that cannot satiate. This is true of food, sex, popularity, fame, beauty, and all sorts of carnal pleasures. They all distract from one's true nature, which is a spiritual joy so sublime it renders these other joys trivial:

If the rational soul is righteous . . . it is then worthy of receiving its reward and goes to the world of the intellect and reaches the light that is created from the Power, its pure brilliance and unmixed splendor and perfect wisdom, from where it had been derived; it is then delighted by its understanding and knowledge. This delight is not one of eating, drinking and other bodily delights, but the joy of the soul in what it sees and hears, a delight that has nothing in common with other delights except the name.¹⁸

But the soul in the body is easily subject to the urges of the body, and she forgets her true nature and her true home. In that struggle of the soul to return to her home, Plato and his followers tell us that the more one trains the soul to deny herself the pleasures of the body, the more she retains her spiritual purity and therefore, the more capable she is, upon separation from the body, of returning home:

One whose rational soul has withdrawn itself [that is, from the lower souls] and upon whom intellect causes its light and splendor to emanate becomes spiritual, godlike, and longing exceedingly for the ways of the angels, as far as lies within human power.¹⁹

The more she indulges in carnal pleasures, material distractions, in the dominant vision, the more weighted down she becomes by physicality, and ultimately it becomes impossible for her to rise back to her home: "such a soul is weighed down, and dragged back into the region of the seen."²⁰

17 Plato, *Phaed.*, 57, 66c.

18 Samuel Miklos Stern, "Ibn Hasday's Neoplatonist: A Neoplatonic Treatise and its Influence on Isaac Israeli and the Longer Version of the Theology of Aristotle," *Oriens* 13-14 (1960-61) 119.

19 Israeli, Altmann, and Stern, *A Neoplatonic Philosopher*, as cited by Sirat, *Jewish Philosophy*, 63.

20 Plato, *Phaed.*, 82, 81d.

So the spiritual task in life is to deny the body in every way. A person is not to focus on the body, not to think of the body, not to indulge the body's drives, all of which weigh the soul down and prevent her from glistening in a spiritual way. In this task, the philosopher lights the way, "The philosopher differs from other men in releasing his soul, as far as possible, from its communion with the body."²¹

God is to the cosmos what one's soul is to one's body (think Casper the Ghost trapped inside a robot). God animates the universe; God – purely spiritual, omnipotent, omniscient, omnibenevolent – animates a corporeal, material creation, just as the soul – innocent and pure – is placed into the body and animates and directs the body. God, of course, being all-powerful and all-wise, is not tempted by the distractions of carnality (except in our sister faith, Christianity, in the person of Jesus during his earthly lifetime). But in Jewish tradition where God does not assume a body in the dominant theology, God is above all temptation. We mortals, on the other hand, are not. While drama exists in the spiritual, the universe is inert. The universe is a thing; it is an object to be used or manipulated in the drama of the soul's resistant temptation at attempting to return. The soul's task is to return home unsullied, and because the world was thought into being, spoken into being, reason and language are the royal road for that return. A soul who disciplines herself, who is, in the words of Walt Whitman, her own "captain," is one who controls and denies her bodily urges and distractions, and keeps her thoughts focused on the spiritual, the sublime, and the divine. Precisely to the degree that one makes that discipline the focus of one's mental and emotional life, precisely to that degree do we link ourselves to the pure spirit of God, and facilitate that return home. The more one becomes accustomed to the spiritual discipline, the easier it becomes. The more one surrenders to the body, the easier and more impelling that indulgence gets, like any harmful addiction.

So God not only knows, but is absolute truth, because God is pure ideal. We can also know objective truth, because the mind is a spiritual organ for perceiving universal, objective reality:

Whenever the soul uses the body as a means to study anything, either by seeing or hearing or any other sense – because to use the body as a means is to study a thing through sense-perception – then it is dragged by the body towards objects that are never constant; and it wanders about itself, and is confused and dizzy, as if drunk, in virtue of contact with things of a similar kind. Whereas whenever it [the soul] studies alone by itself, it departs yonder towards that which is pure and always existent and immortal and unvarying, and in virtue of its kinship with it, enters always into its

21 Plato, *Phaed.*, 56, 65a.

company, whenever it has come to be alone by itself, and whenever it may do so; then it has ceased from its wandering and, when it is about those objects, it is always constant and unvarying, because of its contact with things of a similar kind; and this condition of it is called “wisdom,” is it not?²²

That is what the human mind does: process transcendent, objective truth. And that is what language conveys. So when we speak, we speak truth. The earth is a sphere circling the sun. We know truth, absolutely, and the earth *is* round. That is not a description of my perception of the Earth. It is the Earth as she is. The universe is 13.5 billion years old. That is not a question of my feeling one way whereas you feel another way – the universe either is or it is not that old. In one area of discourse after another, the key human task of reason is to pierce our subjective fantasies, and focus on objective realities, which is what reason accomplishes, through the elimination of error and the disciplined use of language. Language is developed to communicate verbally an objective truth that is filtered through the mind.

To summarize the dominant philosophical story: A God who is all spirit and perfect – the Ideal – is also static, because perfection does not change. And that perfect God, thinks/speaks into reality a dynamic physical creation (note that dynamic is another way of saying imperfect, because what is dynamic falls apart). Anytime one shifts from the spiritual to the physical one transfers from the perfect to the imperfect, from the eternal to the ephemeral. God plants within this dynamic, imperfect, creation a being who partakes simultaneously of the welter of material creation and also of the perfection of a non-corporeal spirit. This creature’s duty is to move about within creation in such a way, that he – or if it’s a soul, she – is able to emerge from her prison – the body – pure and intact. Her essential tool is disembodied, transcendent, universal reason, received by the mind and expressed in language that verbalizes objective reality into words. Correct application of reason and language keeps the soul disciplined and focused, at which point she returns to her supernal home and merges with the Oneness of which she is an emanation.

THE DOMINANT PRESUPPOSITIONS MADE EXPLICIT

Several different assumptions or presuppositions invisibly work in this dualist, spirit/material order, which we must render conscious and visible.

The first is that *reality consists of entities that exist autonomously and independently*. There is such an entity as absolute matter. There is such a thing as absolute you and absolute me, but entities exist in and of themselves, and knowledge consists of knowing what their nature is on their own, stripped of one’s

22 Plato, *Phaed.*, 69, 79c.

own connection to them, simply an objective take of what they are. They exist independently of mind, independently of brains, independently of bodies. They are out there and our job is to know them and to describe them.

The tool for that task is a transcendental, universal wisdom. Reason does not exist culturally; it does not exist as one kind of reason for me and another kind of reason for you; one kind of reason for us, another kind of reason for Martians. It provides access to universal information that we tap into correctly when we get it right, and incorrectly when we get it wrong.

Because it is universal, because it transcends culture and is objective, reason corresponds to objective entities, as does the language we use to express our reasonable conclusions and methods. We use words and ideas to describe entities that are neither verbal nor conceptual. We talk about a table – the word *table* has a one-on-one correspondence to a physical table. We use language to be able to describe objective truth, and because we can do that, there is such an assessment as right and wrong, true and false, which is to say, my perception or evaluation accurately describes and corresponds to objective reality. The implication of that understanding, of course, is that your ideas, to the extent that they agree with my ideas, do too. And when they do not, one of us is misusing universal reason. So, we might both be wrong, but we cannot both be right. And “right” here means corresponding to something objectively true. That is how most philosophers and theologians and scientists have argued across the last two millennia – objects known objectively through universal reason.

This assessment also pertains to morality. As a consequence of the objective, transcendent nature of reason and its accessibility, ethics exist outside of the human mind. *There is a universal objective, non-culturally biased morality, and what cultures properly do is try to understand that objective ethics.* They either get it right or wrong, or they get more of it right or more of it wrong, but it is that objective standard of right or wrong that our minds are able to bring to discourse. The business of ethicists is to use reason to demonstrate that their understanding of good and evil is not merely their personal understanding of good and evil, but *is* good and evil.

Thought is essentially disembodied, verbal, and conscious. Because the brain is an organ that is designed to receive and make verbal the universal objective reason *out there*, it is therefore true that the fact that we are in a body does not really change the truth or the falseness, or the content of our thinking. So, we know the future has not happened yet, we know the past has already happened, this does not change because we are in a body or not, and our minds, when working well, perceive objective truth while in our bodies, but the truth is not significantly filtered through our body-ness. Our being in a body is largely irrelevant to the content of our thinking, and certainly irrelevant to the veracity of what we are thinking. In addition, thinking is mostly conscious. When we

reason, we reason deliberately. That is, after all, the task of revelation, the task of philosophy, the task of ethics – to deliberate, and contemplate the nature of reality, and through an aggressive use of rigorous reason, to be able to establish what that truth is.

Because reason and morality are objective, conscious, and disembodied, later thinkers building on this dominant foundation (Hume, Kant, analytical philosophy, positivism) worked to save the objective and transcendental nature of reason by restricting it to facts, creating a dichotomy between facts, that is to say, material entities and ethics, that is to say, spiritual judgments.²³ So, as Hume insists, *you cannot derive an "ought" from an "is."*²⁴ Just because a claim is true factually, does not mean it is right ethically. The fact that people do or do not do something, the fact that something does or does not exist, does not necessarily make it moral. This becomes a pivotal shift for pre-modern and most modern thinkers – is morality on the same objective, transcendent plane as facts? Contemporary dualists and materialists would insist that it is not (for example, the naturalist fallacy of G. E. Moore).

Since reason is objective and universal, disembodied and conscious, it is also objectively true, then, that human beings are most human when they are reasoning and speaking. Their humanity partakes directly of this transcendent truth, independent of the perceptions or biases of culture or other human beings. That is to say, human beings, properly human, are autonomous. They are independent of other human beings; they are independent of their culture, even when they choose to participate in that culture. They are most God-like, most human, when they participate in this objective, universal reason that leads them to integrate objective reality one person at a time. If one is using reasoning properly, the whole world can disagree and yet be wrong. One's proper identity as a human being is to cultivate this reasoning, this language, and to stand on one's own.

That is by way of background for the ubiquitous (hence, nearly invisible)

- 23 These later dominant thinkers (I'm thinking here of Hume, Kant, and Positivism) strongly disagreed on many points, but they concur on the dichotomy between facts (objective) and values (subjective). For Hume, the distinction is between matters of fact versus relations of ideas. Kant articulated the dichotomy as that between analytic and synthetic judgments. Positivists posed the distinction as between statements that could be verified or falsified (facts, hence, real) versus those which could not (emotions, aesthetics, morals, hence, purely subjective).
- 24 Hume doesn't say it in quite this pithy fashion, but it is most likely derived from the end of *A Treatise of Human Nature* when he comments that "of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought* or *ought not*, expresses some new relation or affirmation, 'tis necessary that it should be observ'd and explain'd." See David Hume, *A Treatise of Human Nature*, eds. David Fate Norton and Mary J. Norton (Oxford: Oxford Univ. Press, 2000) 302.

presuppositions with which the dominant Western systems of thought operated (and many still operate). Those contours — spirit is perfect, unchanging, eternal and objective; the body (and all material reality) is dynamic, falling apart, flawed, and ephemeral, and is a distraction to the working of spirit — that the work of the spirit, which is to say, the mind, is to strip itself of the distractions of the body, of emotions, of subjectivity, and to find a way through transcendent, objective reason to cling to and to articulate objective truth — this forms the common core of Western thought — philosophy, theology, the sciences — virtually to the present. Even while seeking an alternative basis for his epistemology, Descartes reflects the dominant sense of the mind as the receptacle for transcendent truth through purified reason:

Having studied with the best, and learned from them, I was confident that I should seek knowledge in myself, or at least in the great book of the world. . . . I noticed in people's beliefs and customs as much diversity as I had earlier noticed in the views of philosophers. So much was this so, that I learned not to believe too firmly anything that I had been convinced of only by example and custom. I thus gradually freed myself from many errors that may obscure the light of nature in us and make us less capable of hearing reason.²⁵

Spinoza, like Descartes, boldly rejects many of the particulars of the inherited cosmos and metaphysics: he breaks from the dualism of spirit versus body, accepts God as the only substance²⁶ and he understands freedom and revelation to be illusory:

Men are deceived if they think themselves free, an opinion which consists only in this, that they are conscious of their actions and ignorant of the causes by which they are determined.²⁷

Yet for all his deliberate rejection of the dominant tradition he inherited through Descartes, Spinoza still accepts an objective, transcendent reason available to all right-thinking people.

He who has a true idea at the same time knows he has a true idea, and cannot doubt the truth of the thing. . . . As the light makes both itself and the darkness plain, so truth is the standard both of itself and of the false.²⁸

Spinoza still identifies our essential nature as noncorporeal — a disinterested contemplation and love of the divine,

25 René Descartes, *Discourse on Method*, trans. Laurence J. Lafleur (Indianapolis: Bobbs-Merrill, 1960) Part One, 9.

26 "Mind and body are one and the same individual which is conceived now under the attribute of thought and now under the attribute of extension" Spinoza, *Ethics*, II:21. Spinoza, *Ethics*, I:14.

27 Spinoza, *Ethics*, II:35.

28 Spinoza, *Ethics*, II:43.

Clear and distinct knowledge, especially the third kind of knowledge whose foundation is the knowledge of God himself, can accomplish much against the affects. Insofar as the affects are passions, such knowledge brings it about . . . that they constitute the smallest part of the mind. And then it begets a love towards a thing that is immutable and eternal.²⁹

Spinoza sees each person's core task as stripping oneself of a subjective, time-bound perspective, applying the certainty of mathematical reasoning to absolutely certain truths, and reasoning *sub specie aeternitatis*, "It is the nature of reason to perceive things under a certain aspect of eternity."³⁰ Despite his considerable break with prior versions of thought, Spinoza fully accepts a disembodied, objective truth that is objectively and universally distilled through reason. His monism simply rejects the reality (let alone significance) of the body more thoroughly than earlier systems!

Hume and Kant understand themselves to have dismantled the old Neoplatonic/Cartesian fusion. Indeed, Hume introduces his major work by claiming, "To explain the principles of human nature, we in effect propose a compleat system of the sciences, built on a foundation almost entirely new, and the only one upon which they can stand with any security."³¹ Hume follows the empiricism of Locke and Berkeley, and insists that we can only know through our senses, but he refrains from taking seriously how our senses shape the content of our perception. Our knowledge, based on experience, shifts arenas — science is the transcendental understanding of an objective reality. Religion and morality, however, are given a more skeptical demotion, in which religion is discarded and morality is intuited somehow. Hume's philosophical move holds up mathematics, logic, fact as somehow substantive and objective, while jettisoning the more extensive metaphysics of his predecessors: "If we take in our hand any volume; of divinity or school metaphysics, for instance; let us ask, Does it contain any abstract reasoning concerning quantity or number? No. Does it contain any experimental reasoning concerning matter of fact and existence? No. Commit it then to the flames: For it can contain nothing but sophistry and illusion."³² Note that he has privileged mathematical reasoning, logic, and fact as tracking something transcendent and universally true.

The remnants of a much-restricted dualism survive in the gap that Hume introduces between the insights of a philosopher, which deny causality and reduce insight to the workings of the mind itself (and are really true), and the way a person — even Hume — must live (which is a useful fiction). For Hume, those two are severed almost entirely:

29 Spinoza, *Ethics*, V:21.

30 Spinoza, *Ethics*, II:44.

31 Hume, *A Treatise of Human Nature*, 4.

32 David Hume, "An Enquiry Concerning Human Understanding," reprinted in Louis I. Pojman,

Most fortunately it happens, that since reason is incapable of dispelling these clouds, nature herself suffices to that purpose, and cures me of this philosophical melancholy and delirium, either by relaxing this bent of mind, or by some avocation, and lively impression of my senses, which obliterate all these chimeras. I dine, I play a game of back-gammon, I converse, and am merry with my friends; and when after three or four hour's amusement, I would return to these speculations, they appear so cold, and strained, and ridiculous, that I cannot find in my heart to enter into them any farther. Here then I find myself absolutely and necessarily determined to live, and talk, and act like other people in the common affairs of life.³³

Hume's logic, pointing to a pervasive skepticism, makes human living impossible, even for the philosopher. Rather than integrating his experientially-based knowing into his understanding of language as an embodied kind of knowing, Hume sunderes the two realms, to the detriment of both.

Kant marks a watershed moment in modern philosophy, moving past the rationalism and the empiricism of his predecessors, by seeking a way to avoid the skepticism that Hume's clear thinking and delightful writing advanced. Like Hume, he understands reason as a useful way of ordering our experiences of the world. But in the realm of morality, Kant asserts a categorical imperative, a universal standard of right and wrong that he holds to be beyond cultural variation, above temporal or geographic locality. All right thinking people know their ethical duties. Kant's dichotomy of autonomy and heteronomy is stark and suggests an objective unit of measuring by which he comes to know this truth absolutely. In that way, even the great modernizing philosopher remains a child of the inherited objectivity and spirit/material dichotomy. Indeed, this was part of his abiding appeal to theologians: "Jewish philosophy's close involvement with Kant depends, first, on Kant's Platonism — specifically, on Kant's synthesis of Aristotelianism and Platonism . . ."³⁴ Kant knows something that is pure reason, and he can locate it and articulate it!

The nineteenth century saw the beginnings of work to establish thought on different grounds. The innovative and iconoclastic work of Nietzsche, the Pragmatists, Existentialists, much of Continental thought, post-modernism and deconstructionist thought, as well as varied streams of feminist thought have all contributed robust alternatives and critiques of this dominant tradition, which nonetheless holds a grip in popular, scientific, and philosophical circles. Objective truth, universal reason, absolute ethics, literal verbal correspondence — these are the abiding offspring of the dominant tradition, and they remain robust.

Classics of Philosophy: Volume II: Modern and Contemporary (New York: Oxford, 1998) 728.

33 Hume, *A Treatise of Human Nature*, 175.

34 Paul W. Franks, "Jewish Philosophy After Kant: The Legacy of Salomon Maimon," in Michael

PROBLEMS WITH THE DOMINANT SYSTEM AND ITS PRESUPPOSITIONS

Here is the essential and unsolved paradox of the dominant system: *How does something that is absolute spirit relate to something that is not spirit at all?* If God is pure idea, absolute ideal, and if the material universe is absolute substance, how can a pure idea have any impact whatsoever on pure substance? Pre-philosophical theism did not have to directly confront this question, which only emerges as a stark contrast in the blinding glare of self-conscious philosophical analysis. As Hartshorne reminds us,

It is true that the idea of "God," that is (to give a preliminary definition), the supremely excellent or all-worshipful being, first reaches vivid consciousness in an emotional and practical, not in an explicitly logical or analytical, form and that this pre-analytic form is not particularly simple.³⁵

This chasm between absolute spirit and absolute materiality is precisely the place where every philosophical theist has to fudge. Philo's theology begins with an unchanging, complete unity. His core question, as with so many Platonists, is: how did the many emerge out of the one? How does multiplicity emerge from unity? That is the central Platonic challenge, and the answer is – incoherent! Philo's attempted resolution is to invoke the Logos, the instantiation of divine will as somehow being created by, but not from, the Divinity. So God is absolutely unity – meaning God cannot possess Will, because Will would be a division of God, and would indicate an unseemly change reflecting imperfection. But God is beyond Will, beyond impulse, beyond imperfection, beyond personality, timeless, unchanging. Philo somehow has to explain a dynamic, pluralist creation from this unitary, static Oneness. He does this through the divinely-created metastasis (we never find out how!), called "Logos." And Logos manifests Will. Indeed, Logos is just like God except that it has intentionality. From that point on, the system works, as each subsequent level of creation emanates from the preceding and more elevated level. Our problem, however, is that it seems only to forestall the crisis – to shift it from how does God connect to the world to how does God connect to Logos? All it does is remove the problem one step.³⁶

L. Morgan and Peter Eli Gordon, eds., *The Cambridge Companion to Modern Jewish Philosophy* (Cambridge: Cambridge Univ. Press, 2007) 68.

³⁵ Charles Hartshorne and William L. Reese, *Philosophers Speak of God* (Amherst, N.Y.: Humanity Books, 2000) 1. When Hartshorne speaks of the idea of God that first reaches consciousness, he is referring to the chronological beginnings of the idea across history. But his analysis applies to religious insight in the psychological development of each person as well.

³⁶ I understand how *Logos* emanates the world, because *Logos* is itself dynamic and partakes of materiality. But how did God create *Logos*? Plato never clarifies that conundrum. The Gospel of John

The same chasm between static spirit and dynamic matter is found in Kabbalah with the *ʿein sof*. *ʿein sof* is perfect, unchanging, no limits, no dynamism, completely incomprehensible. The *ʿein sof* creates all subsequent creation – including manifestations of the divine somehow. But this is a puzzle precisely because of the unchanging, incomprehensible, perfect unity that *ʿein sof* is. Lacking change, *ʿein sof* can't manifest consciousness or intention. For that hint of dynamism, we have *keter*. *Keter* is the first of the *sefirot*, portrayed traditionally as black, because we know nothing about it, except that *keter* has intentionality. Is there a pictorial connection between *ʿein sof* and *keter*? Never. Why? Because nobody understands how to derive *keter* from the *ʿein sof*. From *keter* down, there is continuous emanation. From *keter* back to *ʿein sof* there is no emanation, no clear explanation at all. How does one proceed from completely static, absolute oneness to dynamic multiplicity? I have no idea, and neither do the dominant philosophical theists, be they philosophers or kabbalists.

Related to the puzzle of the many emerging from the One is *the paradox of a concept of God who is impassable, unchanging, and eternal, yet in relationship, choosing, acting, and doing*. This paradox is incurable, since to be in relationship involves being within time, involves knowing the changes in the second partner, which awareness is itself a change in the first partner. For God to act, to do anything, is to involve God in a series of events and relationships, and as a dynamic entity at that. If we define divine perfection as static, then how can a perfect God love? Love, after all, is dynamic. A lover responds to the beloved. A lover feels what the beloved feels. How can a God who is completely outside space and time (eternal), who is completely unchanging, feel anything – for us? For the world?

How can God know? Rambam recognized this dilemma as the lynchpin of the dominant philosophical theism. Once you assert that God is static and unitary, then God cannot know in any human sense. At this conundrum, the Rambam fudges. He attempts (as did many thinkers before and after him) to distinguish divine “knowing” from human knowing through an apophatic approach, the *via negativa*. His claim is that human language is only literal when discussing human experience. When describing the Divine, it merely denies its opposite (so, claiming that God is loving merely denies that God is the opposite of loving). Given enough negative denials, one develops a sort of silhouette that approximates the Divine. It turns out then that negative theology is not purely negative, nor is it really tenable. As Rudavsky notes,

One problem with this approach, however, is that negative predicates be-

starts with “In the beginning was the Word, and the Word was with God, and the Word was God.” This language is certainly evocative and poetic, but it never explains how the Word was there in the beginning, and how it can both be “with God” and also “be God.”

come more appropriate for describing God than positive ones. Metaphysical attributes are no more attributable than their opposites. Katz is right to note that the Neoplatonists never really overcome this difficulty.³⁷

A God who is completely static, Spinoza points out – extending Rambam's apophantism past that of the Ralbag – has neither will nor knowledge; that is to say, dynamic human traits of any kind. And if God has neither will nor knowledge, then God cannot, in any sense, give a Torah, command *mišvot*, love or act or choose.

The challenge with this cluster of ideas extends beyond the paradox of a simple spiritual unity creating a complex material plurality, and an eternal, impassable God entering into event-processing relationship. It is an insurmountable challenge for an adherent to the dominant system of ideas to explain how transcendent reason can grasp physical reality and how language can express that reality in words. *It remains a challenge to explain how it is that ideas or words can have a one-to-one correspondence to things.* We know what objects are. We can touch them, we can feel them, we can bump into them, we can break them, we can make them. We know what words and ideas are. We can do none of those actions with words. How is it that words can have an objective correspondence to things? The dominant paradigms do not answer that question very convincingly either, and very few contemporary philosophers accept that correspondence notion of truth and language.³⁸ That rupture means that whatever it is that language is doing, whatever it is that ideas are doing, they are not literally verbalizing objective reality.

An ethical challenge perpetuated by this approach is a consequence of its insistence that knowledge is objective. Armed with access to an objective, universal truth that corresponds to correctly describing something outside of one's mind or brain, then anyone who disagrees is speaking falsehood. In this understanding of thought, most of what we say is literally true or literally false, and therefore no room exists for diverse opinion. One's assertion is either right or wrong. If I know God's will objectively, then I know precisely what God's intention is for the role of men and women. And if you do not agree with me, it is not that you merely advocate a different view, it is that you are benighted. A theologian of the dominant paradigm knows exactly what God wants, for example, of our sexual practices (whether from Scripture, Revelation, or

37 Steven T. Katz, "Utterance and Ineffability in Jewish Neoplatonism," in Lenn E. Goodman, ed., *Neoplatonism and Jewish Thought* (Albany: State Univ. of New York Press, 1992) 279–98. Rudavsky, "Medieval Jewish Neoplatonism," 151; see Kenneth Seeskin, "The Positive Contribution of Negative Theology," in David Novak and Norbert M. Samuelson, eds., *Proceedings of the Academy for Jewish Philosophy* (Lanham: Univ. Press of America, 1992) 103–27.

38 See Hilary Putnam, "Do True Assertions Correspond to Reality?" and "Language and Reality" in his *Mind, Language and Reality* (Cambridge: Cambridge Univ. Press, 1975) 70–84, 272–90.

Natural Religion), and if one disagrees with that opinion, one does not merely entertain a different view, one is a sinner.

This intolerance for differing viewpoints or practices is an intrinsic consequence of such an approach to thought. If language and ideas correspond transcendently to a universal objective truth, then there can be only one right way, because there is only one objective reality. This way of thinking means that human beings will constantly be in conflict with each other, because there is no way to accommodate multiple opinions on matters of truth. There is either true or false. If my religion (or any ideology) is true (meaning it corresponds to something objective, one-on-one), then every other religion, and frankly every other version of my religion, is wrong to the extent that I am right. The dominant system of thinking dooms human beings to eternal conflict over ideas, and over perceptions of the world. This is true not only for religious ideologies. If, again, there was an objective truth in the realm of ideas, then Marxism is either right and its enemies are retarding the inevitable revolution that ought to come, or Capitalism is right, and its enemies are blighting initiative. Freudian analytic theory is right, or behaviorist theory is right — one or the other. There is no room for multiple societal systems or ethical pluralism in a worldview that claims to know truth objectively.

The dominant understanding of the world elevates one kind of reasoning, and verbal communication as the essence of being human. If one's mind is a receptor for receiving objective truth, and language is verbalizing objective truth to communicate accurately and objectively, then people who use different modes of reasoning are not simply using different modes of reasoning, they are inferior. Vincent Van Gogh was a lovely painter, but unintelligent, because he could not do physics. Albert Einstein, strong on the physics, was weak on hygiene and relations. Depending upon which one identifies as the essence of reason, somebody else is less smart, and therefore, less human, because it is the mind, properly functioning, that epitomizes a human being. We are, remember, speaking creatures in this model.

What about people who utilize different kinds of reason? What about those of us who rely on intuition? What about those who use art or movement to make sense of the world? What about those who use some kind of emotive grasp, rather than an analytical dissection to understand the world? In the dominant conception, there is a right way of thinking and multiple wrong, inferior ways of thinking. What about people who think, but don't speak? I am the father of a brilliant, engaging boy with autism. And I have seen the way a verbally-dominated world treats him and his friends as trash. A person in a wheelchair is invisible; someone retarded is invisible; if you are blind or have any disabilities, you are held to matter less than people who do not. Contemporary society rewards people who appear to matter more, not who matter less. That is an

inevitable consequence of defining the essence of one's humanity by analytical thought objectively applied to the world and percolated through words. This degradation is not simply a peripheral distortion one could trim away from the dominant view; it is an inescapable consequence and expression of it.

The dominant philosophy then establishes a radical dichotomy between those areas where reason and knowledge supposedly correspond to objective fact, and where emotion and feelings merely intuit an inner state. This nexus of ideas creates a context that dichotomizes the hard sciences and the humanities – which are held to be somehow less rigorous, more indulgent.³⁹ Poetry may convey how someone feels inside but says nothing about the world, whereas physics involves nothing about inner feelings, but transparently chronicles the world. That is why there is no “Jewish” physics, “Japanese” physics, “English” physics, there is just physics, and physics is either true or false. But religion and philosophy are in the category of the soft humanities, which means they are not tracking something objective, they are delusional in fact, or merely harmless at best. Religion may be a useful delusion, but it is not dealing in the realm of facts; it is not dealing in the realm of truth. So this whole dominant conception, in the end, undermines and destroys the very humanities that created it. Since one is understood to be essentially human to the degree that one traces universal reason and objective language, and since religion does neither of those things, poetry does neither of those things, art, dance and drama do none of those things, they are, at best, secondary activities not essential to being human, and certainly not of primary value. Science, on the other hand, is supposedly science to the degree that it is simply and purely objective. One's humanity does not enter into the scientific realm; the scientist conceives a hypothesis, submits the hypothesis to experimental confirmation, and once it is confirmed experimentally, establishes it as fact, because it reflects an objective reality and is therefore true, objectively.

This bifurcation of insight into hard science which is elevated, and soft humanities which are denigrated, is problematic in at least two ways: the shared assumption of all scientific enterprise is a realism that posits an external world that is responsive to human exploration. The remarkable achievements of science constitute sufficient justification to hold to that realism. But the idea that scientific inquiry is hermetically sealed from more subjective human values is false. As mathematical physicist John Polkinghorne notes:

As part of this skillful practice [science], there is an essential role for the evaluation of non-empirical criteria such as economy, elegance, and naturalness, whose satisfaction is vital to the acceptance of a scientific theory.

39 See Gerald M. Edelman, “Forms of Knowledge: The Divorce Between Science and the Humanities,” in his *Second Nature: Brain Science and Human Knowledge* (New Haven: Yale Univ. Press, 2006) 68–76.

The justification for the use of these criteria lies in their having proved historically to be the means of identifying theories which turn out to have long-term fruitfulness, evidenced by their being capable of yielding understanding of phenomena not encountered or envisaged at the time of the theory's conception. The enforcement of these criteria proves, again as a matter of historical experience, to be the way in which the scientific community is able to solve the notorious problem of the underestimation of theory by experiment.⁴⁰

The exploration of the universe yields to a method that mingles empirical and verifiable criteria and data with valuations that resist such a rubric. As Putnam demonstrates, the dichotomy between fact and value is forced and flawed. Indeed, this is true not only in terms of criteria, but in terms of understanding. Again quoting Polkinghorne, "There are no significant scientific facts that are not already interpreted facts."⁴¹ Actually there is plenty that is "soft" in the sciences, and that very softness constitutes an essential tool for scientific advance.

Another problem with this bifurcation is its false denigration of human wisdom outside of the realms of the mathematical and empirical. Surely human wisdom is advanced not only by verifiable and falsifiable insight but also by those lessons derived from the harvest of living, from the insight of poetry, from flashes of intuition, or from the sweep of emotion. We rely on our thinking to explore the natural world and we reap the benefits of that trust. Why not extend such generosity to the other activities of our minds as well? Humans navigate life not only through the assessment of facts, but often through intuition, feeling, and association. Strip human processing of all non-empirical findings and methods, and our exploration is seriously impeded. The fullness of human knowing, the continuing enrichment of being human, demands the integration and elevation of all areas of human thought – art, drama, literature, religion, along with physics and mathematics.

The dominant notion of reason describing an objective reality requires us to deny much of how we integrate what we know from different areas of our thinking and our experiencing. What is the place of religion in helping us understand our world? Philosophical theologians for years have been retreating to gradually-diminishing gaps. Every place where science cannot (yet) answer a question, there a theologian stands up and claims: That's because of God! Then a generation later, a scientist figures out a natural explanation for that previously unexplained quandary, sending the theologians packing as they retreat to where the next gap may still be found. Every time science makes an advance, religion has to retreat because of that scientific advance. In addition to imposing a permanent defensive retreat, this bifurcation of facts (science) from feelings

40 John Polkinghorne, *Belief in God in an Age of Science* (New Haven: Yale Univ. Press, 1998) 106.

41 Polkinghorne, *Belief in God*, 107.

(religion) forces religion to say things that we know are not helpful. Both evolutionary biology⁴² and cosmological physics assert that no gaps exist.

Compelling lines of evidence demonstrate beyond any reasonable doubt that evolution occurred as a historical process and continues today. . . . It is no longer possible to sustain scientifically the view that living things did not evolve from earlier forms or that the human species was not produced by the same evolutionary mechanisms that apply to the rest of the living world.⁴³

One can explain the world from 14 billion years ago until today without any break in a natural explanation, as does the physical biochemist Arthur Peacocke:

We are now possessed with a remarkably coherent picture of the origin and development to the present state of the universe, of planet earth, and of life on the earth. This account is a naturalistic, intelligible, and well-evidenced story of the development over the last 12 billion years or so of the observable universe from a primal concentration of mass-energy expanding with space in time to the present observable universe, including earth. . . . The nexus of causality is unbroken and now requires no *deus ex machina*, no "God of the gaps," to explain *inter alia* the cosmic development, the formation of planet earth, the transition from inorganic to living matter, the origin of species, and the development of complex brains that have the capacity to be aware.⁴⁴

If science can explain the development of the cosmos from a few moments after the Big Bang through the creation of planet earth to the start of organic matter and the initiation of biological evolution to the present time, then any religious thought that requires a supernatural intervening deity stands in violation of this near-ubiquitous consensus based on overwhelming evidence. The easiest way for a scientist to be laughed out of a room of his or her colleagues is to invoke an intervening God into the middle of a scientific explanation of any phenomenon. Even religious scientists dare not do that. Locked into the dominant philosophical views, we are trapped in two mutually exclusive narratives, science and religion.⁴⁵ And the religious narrative requires ignoring the

42 "Natura non facit saltum, nature does not jump." Charles Darwin, *The Origin of Species: 150th Anniversary Edition* (New York: Signet Classics, 2003) 161.

43 Natural Academy of Sciences, *Teaching About Evolution and the Nature of Science* (Washington, D.C.: National Academy Press, 1998) 16.

44 Arthur Peacocke, "Articulating God's Presence in and to the World Unveiled by the Sciences," in Philip Clayton and Arthur Peacocke, eds., *In Whom We Live and Move and Have Our Being: Panentheistic Reflections on God's Presence in a Scientific World* (Grand Rapids: Eerdmans, 2004) 141.

45 The best that friendly adherents to the dominant metaphysics (scientists or theologians) can do is to offer a truce between hermetically-sealed areas of expertise. Hence, science is assigned answering "how" questions, and religion is restricted to "why."

data that drives and supports the scientific telling. Such a religion is in constant retreat, constantly on the defensive, and subject to every new discovery made in the world. Small wonder, then, that theologians wedded to these dominant assumptions often retreat either to a defense of mere plausibility, to nonrealism, or to the safely-walled world of subjective emotion.⁴⁶ Once again, science enjoys being the public (privileged) discourse, and religion is relegated to mere private sentiment. This dichotomy remains an abiding and pernicious consequence of the dominant systems of thought.

The dominant system asserts what is essential/foundational and what is not, which is also intellectually hard to sustain. How does one decide what is essential and what is peripheral, and justify that assessment as an objective claim? How does one know what the foundation of thought ought to be? Recall Descartes attempting to develop an objective description of the world, starting with a self-validating principle on which he could establish every other principle. He started with his ability to think, "*Cogito ergo sum*." He argues from an awareness of his own thinking as a self-validating thought. The problem, however, is that every time a philosopher or theologian locates some fact or thought as a foundational piece of information, then someone else will dispute its being self-evident. Thus far there has not been an ability to generate universal consent for what is foundational and what merely builds on the foundation. For a philosophical system that insists on universal reality, that inability reveals a fatal flaw.

In addition to these unresolved paradoxes and contradictions in the realm of epistemology and metaphysics, the dominant philosophical theism manifests serious paradoxes and contradictions in the realm of values:

A system that posits that spirit and body are in conflict, and that spirit is good and body is bad, is a philosophy that denigrates the world. Our true home is the superlunar world of spirit, or *‘olam haba*, or the intellectual love of the Eternal, or a Super-ego, Ego, and Id in balance, or a proletarian paradise. But whatever the version of Neoplatonic paradise, it involves transcending this imperfect world for a perfect creation elsewhere (in time or in space). As a consequence, creation is temporary and unimportant, and our true home is elsewhere. That shift in focus toward a future paradise, an inner bliss, a social utopia diminishes the importance of the present and of the world. The dominant thinking allows us to not worry about the planet, nor about taking care of the fragile balance of the ecosystem. It encourages us to stop thinking about solving the social problems of this world because, after all, this world is a gossamer veil of tears, and eternity awaits our true home. Besides, frankly, the more engaged one gets in the issues of this world, the less God-intoxicated one is in this world, and the

46 For plausibility, see John Hick, "Religious Meaning and Experience," in *An Interpretation of Religion: Human Responses to the Transcendent* (New Haven: Yale Univ. Press, 1989) 153–71; Keith

more weighted-down one's soul will become.⁴⁷ But we live in a world in which we have seen the consequence of separating spirit and body, soul and world, and the denigration of the world in which we live. In the Newtonian age, the world became a machine for our exploitation.⁴⁸ In the post-Newtonian age of nuclear power, our soaring population and technological ravenousness threaten the very capacity of the biosphere to sustain human and mammalian life. We are all slowly poisoning our children and ourselves because of that denigration of creation.⁴⁹

*Soul is to body as men are to women, or, humanity is to nature as men are to women.*⁵⁰ The dominant dichotomy placed women into the same subservient role vis-à-vis men that it placed nature vis-à-vis humanity.

Some theorists focus on language, particularly the symbolic connections between sexist and naturist language, that is, language that inferiorizes women and nonhuman nature by naturalizing women and feminizing nature. . . . Women are often described in animal terms (for example, as cows, foxes, chicks, serpents, bitches, beavers, old bats, pussycats, cats, bird-brains, hare-brains). Nature is often described in female and sexual terms: nature is raped, mastered, conquered, controlled, mined. Her "secrets" are "penetrated" and her "womb" is put into the services of the "man of science." "Virgin timber" is felled, cut down. "Fertile soil" is tilled and land that lies "fallow" is "barren," useless.⁵¹

Because of their monthly flux, because they bear life within themselves, women are often construed as intrinsically carnal, closer to nature. Whereas men,

Yandell, *The Epistemology of Religious Experience* (Cambridge: Cambridge Univ. Press, 1993); Richard Swinburne, *The Existence of God* (Oxford: Clarendon Press, 1979). For nonrealism, see D. Z. Phillips, *Faith and Philosophical Inquiry* (New York: Schocken Books, 1971) and Don Cupitt, *Taking Leave of God* (New York: Crossroad, 1981) and *What is a Story?* (London: SCM Press, 1991). For subjective emotion, most famously, William James, *The Varieties of Religious Experience* (New York: First Vintage Books, 1990); see also William P. Alston, "Religious Experience Justifies Religious Belief," in Michael L. Peterson and Raymond J. VanArragon, eds., *Contemporary Debates in Philosophy of Religion* (Malden: Blackwell Publishing, 2004) 135–45.

47 Just one example: "One who reviews his studies while strolling and interrupts his studies to remark, 'What a beautiful tree,' or, 'What a lovely field,' is considered as having committed a capital offense" (*m.ʿAbot* 3:9).

48 See Ian G. Barbour, *Religion and Science: Historical and Contemporary Issues* (San Francisco: Harper-San Francisco, 1997) 3–32.

49 Michael E. Zimmerman, ed., *Environmental Philosophy: From Animal Rights to Radical Ecology* (Englewood Cliffs: Prentice Hall, 1993); Derek Wall, ed., *Green History: A Reader in Environmental Literature, Philosophy and Politics* (London: Routledge, 1994).

50 See Carolyn Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (San Francisco: HarperSan Francisco, 1983).

51 Karen Warren, "Introduction," in Zimmerman, *Environmental Philosophy*, 259.

because they are dichotomized as more intellectual than women, much more spiritual than women, understand themselves to have an elevated spirituality, and argue that women pull them down. Women embody heterosexual male drives, their lust, their bodily urges, and therefore, women are marginalized: "In Platonic and Neoplatonic symbolism, therefore, both nature and matter were feminine, while the Ideas were masculine."⁵² The marginalization and denigration of women is also part and parcel of the spiritual/material dichotomy, and finds unquestioned expression in philosophical theism as well.

The dominant approach, including philosophical theism, entails the denigration and marginalization of non-human life. If the pinnacle of Divinity is pure reason and absolute spirit, then that creature uniquely created to practice reason and to return to spirit is the pinnacle and purpose of creation. The elevation of humanity to the very purpose and capstone of creation is found not only in many religious expressions of the dominant ideas⁵³ but in its secular expressions as well — Marxism, positivism, psychoanalytic theory, to name just a few. As philosopher Peter Singer ventriloquizes the reasoning used to justify the denigration of animals, "Since justice demands only that we treat equals equally, unequal treatment of humans and nonhumans cannot be an injustice."⁵⁴ One might argue that what constitutes excellence in a species should have some relationship to their environmental niche and their subsequent ability to thrive (for humans, the mind; for cheetahs, speed, and so on). But the dominant system of ideas does not allow for multiple perspectives. There is one truth, and so not surprisingly, when people reason about what is the best species, we come up with ourselves! And we have seen the disastrous (and thus far, uncontrolled) consequences of humanity's living on the planet in such a way that our species is the only one that counts. It is dangerous even from a Machiavellian perspective; we are poisoning ourselves out of business. In the extinction of countless species, we are denying ourselves potential cures to illness, sources of food, and resources as yet undiscovered. But the crisis of this human bias extends far beyond mere self-interest; it is soul-deadening. On vacation in Hawaii recently, my family and I swam with dolphins. There is something completely non-rational and magical about getting in the water with these animals, as I believe is true with every encounter with the rest of the biosphere. The soul/body dichotomy trains us to ignore the biosphere, along with the rest of material creation, as a danger to our immortal souls. The goal of this brand of philosophical theism is to look beyond the material world, to fix our sights and hopes on

52 Merchant, *The Death of Nature*, 10.

53 "Man was not made for the world, but the world for man," 2 Bar. 14:18, and see 4 Ezra 8:44.

54 Peter Singer, "Animal Liberation," in Zimmerman, *Environmental Philosophy*, 23.

the world of spirit. The ideal space is a sanctuary or a library, in either case a room without plants, animals, or, until recently, women.

Because the dominant fusion denigrates the body as the source of carnal distraction and sin, it trains its adherents to ignore the body's needs and its joys. This is surely one of those most destructive aspects of this nexus of ideas' legacy. The result of ignoring the body and belittling it is paradoxical — we don't do what it takes to live as healthy embodied creatures (exercise, wise diet, adequate sleep, and so on), and we compensate by filling our bodies with junk — processed carbohydrates, refined sugars, etc. As a result of elevating the spiritual at the expense of the physical, we are obese and flabby. We clog our arteries; we develop diabetes at an unprecedented rate — results that are avoidable through consciously attending to our bodies and their wellbeing. Airlines now struggle to accommodate the increasing weight and size of American bodies, and people do not focus on living in their bodies. They do not listen to rhythms of their bodies; they do not feel the needs of their bodies; they do not move with their bodies, and we pay a high price for a spirituality that continues to cause us to alienate ourselves from our bodies.

The dominant ideology elevates emotionless reason while marginalizing and denigrating emotion. This dichotomy violates what we know scientifically about the human exercise of thought:

Pattern recognition by the brain precedes logic, and early thought is creative in its pattern making through processes akin to metaphor. These processes are not free of feeling. Indeed, the constraints of value systems essential to the evolution of adaptive behavior make emotional experience a necessary accompaniment to the acquisition of knowledge even after logic and formal analysis supervene at later stages.⁵⁵

It turns out that emotion is an intrinsic part of human thinking, inseparable from the fullest exercise of reasoning. Emotions evolved as a mental function to help move us through the world. Emotions cause us to treat our kids the way we treat them, and to make the sacrifices we do. Emotions make us well up in tears when we hear powerful music, or contemplate the Torah, or make altruistic sacrifices of our time, our resources, and our wellbeing. But the dominant set of ideas denigrates emotions as a distraction from what is objectively true, and in the process distorts what it means to be a thinking human:

What we have called traditional epistemology is concerned with justified true belief and the pursuit of truth and truth conditions. . . . But their pursuit is, in the end, a narrow and terminal enterprise largely preoccupied

⁵⁵ Edelman, *Second Nature*, 65.

with language, meaning, and logic. It has not been the proper concern of that enterprise to take up motivation (conscious or not) or emotion or pattern recognition per se. Nonetheless, these are all critical to how knowledge is acquired.⁵⁶

A mind stripped of emotions is incapable of thinking, let alone of conducting a full human life.

For all of those reasons, the dominant system, and the philosophical theism it produced, needs to be retired as the structure through which we discuss, think about, and experience religion. It is not necessary, is often erroneous, and is regularly harmful. In addition to which, it represents a later importation into Jewish thought that desensitizes us to the true brilliance and continuing attractiveness of biblical/rabbinic ways of conceiving of personhood, thought, truth, the relationship of the divine to the world, and ethical rigor:

The ideas of a purely transcendent God, of an afterlife and an afterworld, of a divine domain ontologically separate from ours, are posterior to the Bible and partly foreign to it. The biblical God is awesome, remote, and unseen, but nonetheless immersed in this world and in human affairs. . . . The attempts of Maimonides and other Jewish theologians to explain it away allegorically are posterior to the Bible by over a millennium and a half.⁵⁷

I will proceed now with a radical and, I hope, sensible return to a biblical/rabbinic approach to theology, grounded in recent trends in cognitive science, linguistics, natural sciences, philosophy, and theology.

PRELUDE TO THE SOLUTION

FROM MONOPOLAR TO DIPOLAR AND COMPLEMENTARITY

Human thought tends toward the simple, which is to say, favors the overly simple. As Whitehead warns, "Seek simplicity — and mistrust it." Classical logic is binary: "If the choice is between A and B, and A is correct, then B must necessarily be wrong."⁵⁸ Morris Cohen criticizes this regnant approach, which he terms monopolarity, the expectation that "the highest form of reality is to be indicated by separating or purifying one pole of the ultimate contrasts from the other pole."⁵⁹ If our statements correspond to an objective, transcendent real-

56 Edelman, *Second Nature*, 96.

57 Yirmiyahu Yovel, *Spinoza and Other Heretics: The Adventures of Immanence* (Princeton: Princeton Univ. Press, 1989) 167.

58 K. Helmut Reich, "Complementarity," in J. Wentzel Wrede Van Huyssteen, ed., *Encyclopedia of Science and Religion* (2 vols.: New York: Macmillan Reference USA, 2003) 1:150.

59 Hartshorne and Reese, *Philosophers Speak of God*, 2. See Morris R. Cohen, *A Preface to Logic* (New York: Meridian Press, 1956) 87–89.

ity, then we are forced into this monopolarity, not only in matters theological, but as a standard mode of abstract thought. In the realm of abstract thought, this tendency toward oversimplification often involves:

Taking each pair of ultimate contraries, such as one and many, permanence and change, being and becoming, necessity and contingency, the self-sufficient or nonrelative versus the dependent or relative, the actual versus the potential, one decides in each case which member of the pair is good or admirable and then attributes it (in some superbly excellent or transcendent form) to deity, while wholly denying the contrasting term.⁶⁰

But this monopolarity reflects not only a misunderstanding of the nature of our thinking and how it relates to the world (there is no one-to-one correspondence to an objective reality); monopolarity also reflects a delusional over-reaching, the assumption that human knowledge can comprehensively entail its object and then possess the ability to describe it in a single representation.

Cohen advocates moving beyond selecting one pole while rejecting the other, calling for a method that could recognize both poles as contributing understanding to phenomenon being studied or described. In this agenda, Cohen shares the insight of Niels Bohr, one of the founding physicists of quantum mechanics. Bohr looks at the wave-particle duality of light, and notes that these divergent modes of representation were based on whether one measured all positions (waves) or all momenta (particles). Rather than seeing these distinct representations as contradictory, Bohr recognizes them to be complementary because they correspond to different experimental arrangements that cannot be conducted simultaneously.⁶¹ He then allows that this use of complementarity should be extended to other “phenomena susceptible to analysis by two kinds of models: mechanistic and organic models in biology, behavioristic and introspective models in psychology, models of free will and determinism in philosophy, or of divine justice and divine love in theology.”⁶²

Expanding our descriptive ability beyond simple binary opposition opens us to the kind of understandings that human embodiment, language, and abstract thought require. “Genuine complementarity involves a trivalent logic (compatible, incompatible, and noncompatible), which allows for a context-dependence

60 Hartshorne and Reese, *Philosophers Speak of God*, 2.

61 “Complementarity refers to the possibility that the same entity/phenomenon manifests itself in distinct, categorically different ways. All the differing manifestations need to be described and explained, and be part of an overarching theory of the entity/phenomenon.” Reich, “Complementarity,” 1:150.

62 Niels Bohr, *Atomic Physics and Human Knowledge* (New York: Chapman & Hall and John Wiley & Sons, 1958), cited in Ian Barbour, *Myths, Models and Paradigms: A Comparative Study In Science and Religion* (New York: Harper Collins Publishers, 1976) 76.

of the respective explanatory powers.”⁶³ Cohen recognizes, “Opposites such as immediacy and mediation, unity and plurality, the fixed and the flux, the ideal and the real, actual and possible . . . all involve each other when applied to any significant entity.”⁶⁴

It is artificial to force our thought, language, or perception into a Procrustean bed of A but not B. Why? Barbour notes that Bohr “shares Kant’s skepticism about the possibility of knowing the world in itself.”⁶⁵ Because of this Kantian gap (between the world and our description of it), we cannot come closer to articulating our perceptions than a series of successive and incomplete complementary descriptions that cannot, themselves, be unified. Barbour locates the need for this complementarity beyond Kantian metaphysics, in that he “would want to attribute them less to the given structures of the mind (as in Bohr’s neo-Kantian view) than to the limitations of our experience and imagination.”⁶⁶ We are simply unable to conceptualize or to articulate the entirety of our experience in a single image, hence the need for complementary representations.

In the realm of theology, process philosopher Charles Hartshorne articulates a similar insight, explicitly crediting the logic of Morris Cohen as his major source. His shift from monopolarity is toward what he labels “dipolar” thinking. As Charles Hartshorne explains the principle, “ultimate contraries are cor-relatives, mutually interdependent, so that nothing real can be described by the wholly one-sided assertion of simplicity, being, actuality, and the like, each in a ‘pure’ form, devoid and independent of complexity, becoming, potentiality, and related contraries.”⁶⁷ From this, Hartshorne develops a dipolar approach:

We must equally affirm both poles of each pair of ultimate contraries. But, to avoid contradiction, we must posit two main aspects in the essence of the Supreme Being, to one of which the one pole supremely applies (with only the limitation of the general inadequacy of all human ideas); to the other aspect, the other pole applies (with the same qualification). What we must strictly negate of both aspects is any nonsupreme form of either pole. . . . For, according to this doctrine (which may be called the “theory of dipolarity”), God will, like other individuals, but as a supreme case or supercase, have an individual essence, and he will have accidents as well, so that what is “in *him*” need not, for all that, be in *his essence*.⁶⁸

63 Reich, “Complementarity,” 1:151.

64 Morris Raphael Cohen, *Reason and Nature: An Essay on the Meaning of Scientific Method* (Glencoe, Ill.: Free Press, 1953) 165.

65 Barbour, *Myths, Models and Paradigms*, 168.

66 Barbour, *Myths, Models and Paradigms*, 76.

67 Hartshorne and Reese, *Philosophers Speak of God*, 2.

68 Hartshorne and Reese, *Philosophers Speak of God*, 4.

Hartshorne breaks with monopolarity by delineating two aspects of God: an ontology (or essence) and God in relationship (or accidents).⁶⁹ Hartshorne does not, to my knowledge, extend this dipolarity to things in the world, but saves it for God as a way of representing his understanding of God's dipolar nature (which he asserts is literally true).

Hartshorne was clearly aware of Bohr's thinking,⁷⁰ and refers to Cohen's explicitly. I do not know whether or not he ever responded to Bohr's complementarity. Cohen did not intend to restrict multipolarity to the theological realm. And Bohr offers an approach that allows us to describe phenomena and conceptions more fully than in a binary pair.⁷¹ I think it not unfair to extend Hartshorne's vastly productive dipolar program for the divine into a complementary program that embraces both the divine and all creation. That extension remains faithful to Hartshorne's desire to explicate the divine as the supremely excellent example of each virtue, rather than to continue the dominant theological chasm separating the divine from the mundane. In stressing complementarity (rather than dipolarity), I hope to be true to Hartshorne's genius even while pushing his terminology and thinking to what seems to me to be the next level.

In that regard, a caveat is in place: dipolarity and complementarity can invite sheer sloppiness and laziness if applied without some guidelines. Polkinghorne notes that one could employ complementarity to justify "any paradoxical pairing that took one's fancy."⁷² D. M. MacKay both defends and refines the use of complementarity by insisting that two descriptions are complementary if 1. they have a common referent, 2. the logical preconditions for their use are mutually exclusive, and 3. each is in principle exhaustive in its own frame of reference.⁷³ These requirements seem eminently sane, and are, indeed, characteristic of Hartshorne's articulation of dipolarity. Barbour expresses continued

69 Note that Hartshorne employs Platonic conception and language (essence and accident), although he repudiates the Neoplatonic dichotomy between spiritual and material. He also employs Platonic literalism (he knows objective reality objectively), and a Platonic essentialism. Not coincidentally, I think, he also employs a Platonic panpsychism, all of which will be seen as unnecessary (and unhelpful) once one accepts the possibility of critical realism and embodied conceptual metaphor.

70 He refers to Bohr's scientific thought on more than one occasion in his writings.

71 In this insight, as in so many others, the contemporary thinkers are anticipated by the medievalists. As the great medieval sage, Rav Sa'adia Gaon observes, "The conception of God as Creator, which we established, implies the attributes of Life, Power, and Wisdom. Our Reason discovers these three aspects of the notion of a Creator in a single flash of intuition, as one reality" (*Emunot ve-de'ot*, 2). Three aspects of a single reality, but our process of reason can only perceive them one at a time.

72 John Polkinghorne, *Quantum Theory: A Very Short Introduction* (Oxford: Oxford Univ. Press, 2002) 37.

73 D. M. MacKay, "Complementarity," *Aristotelian Society Supplementary* 32 (1958) 105, cited in Barbour, *Myths, Models and Paradigms*, 77.

concern with extending this concept from quantum physics to areas of philosophical reflection, and he insists on three requirements:

1. Complementarity provides no justification for an uncritical acceptance of dichotomies. . . . Coherence remains an important ideal and criterion in all reflective inquiry.
2. Models should be called complementary only if they refer to the same entity and are of the same logical type.⁷⁴
3. The complementarity of models, under these conditions, underscores the inadequacy of literalism. . . . They are symbolic representations of aspects of reality that cannot be consistently visualized in terms of analogies with everyday experience.⁷⁵

PART OF THE SOLUTION, NUMBER ONE EMBODIED REALISM AND INTERACTIVE RELATIONSHIP

How do we know what we know? The dominant idea is that ideas are *out there*, and the brain is a tool for picking up accurately what is out there and transmitting it as thought and words that correspond one-on-one to what is out there:

Much of the Western philosophical tradition assumes a form of faculty psychology, according to which we have a faculty of reason separate from our faculties of perception and bodily movement. . . . Consequently, there is assumed to be an absolute dichotomy between *perception* and *conception*. While *perception* has always been accepted as bodily in nature, just as movement is, *conception* – the formation and use of concepts – has traditionally been seen as purely mental and wholly separate from and independent of our abilities to perceive and move.⁷⁶

Contemporary scientific research suggests that thinking, both perception and conception, is profoundly embodied.⁷⁷ The fact that we are biological creatures

74 This insistence seems to conflict directly with Hartshorne's use of dipolarity. He applies complementary/contradictory terms only to different levels of the divine (the transcendent and the immanent), whereas Barbour almost requires the ability to apply both terms to the same level.

75 Ian Barbour, *Nature, Human Nature and God* (Minneapolis: Fortress Press, 2002) 78. This third point anticipates the section on conceptual metaphors precisely. Had Hartshorne entertained this understanding of symbol, metaphor, analogy, he might not have required recourse to panpsychism, nor would he have needed to restrict dipolarity to the divine, nor its application to different levels of the divine.

76 George Lakoff and Mark Johnson, *Philosophy in the Flesh: The Embodied Mind and Its Challenge to Western Thought* (New York: Basic Books, 1999) 37.

77 Philosophizing from the analytic tradition, Donald Davidson develops a similar assessment, which he terms "anomalous monism," which "resembles materialism in its claim that all events are phys-

with a particular kind of body is not incidental or marginal to the nature or the content of our thought. What we perceive and conceive in the world is not simply what is *out there*; it is a much more complex interaction of what is out there processed through our biology:

As embodied, imaginative creatures, *we never were separated or divorced from reality in the first place*. What has always made science possible is our embodiment, not our transcendence of it, and our imagination, not our avoidance of it.⁷⁸

That claim sounds fairly innocent prior to exploring its implications.⁷⁹ One implication (and we get this from cognitive science), is that, as opposed to the Neoplatonic idea that most thought is rational and conscious, we recognize that most thought possesses and reflects neither of those two qualities. Most thought – perhaps 95%⁸⁰ – is non-rational – that is not to say irrational, but non-rational – and most thought is not conscious.⁸¹

Most of our thinking is governed by those unconscious, non-verbal thoughts, and we process these thoughts continuously to survive. Walking down the street, we sense motion; we see blurs as cars hurtle past. Without conscious awareness, we plot the trajectory of those cars, sense the timing of when it is safe to walk, when the next car will reach our location. Without conscious awareness, we have opinions about the drivers in those cars – about their breathing, their relatedness, and their humanity. We navigate the world without ever thinking about those myriad opinions. Walking by a river, in conversation with a friend, we are focusing consciously on the conversation, but know when to stop at the crosswalk, we know which colors are lit and what that means, we keep track of the cars moving around. There are all kinds of information that we process without ever, ever being consciously aware. Beyond these mental activities lurk

ical, but rejects the thesis, usually considered essential to materialism, that mental phenomena can be given purely physical explanations.” He does not, however, take the step of allowing the physicality (or, in this case, biology) of the mental to impact the content and form of mental process or articulation, in that regard remaining within the dominant analytical school. See Donald Davidson, *The Essential Davidson* (Oxford: Oxford Univ. Press, 2006) 110.

⁷⁸ Lakoff and Johnson, *Philosophy in the Flesh*, 93.

⁷⁹ See Robert Audi, “Theism and the Scientific Understanding of the Mind,” in Philip L. Quinn and Charles Taliaferro, eds., *A Companion to Philosophy of Religion* (Cambridge: Blackwell Publishers, 1997).

⁸⁰ Lakoff and Johnson, *Philosophy in the Flesh*, 13.

⁸¹ Barrett refers to these as “nonreflective beliefs” because they “come automatically, require no careful rumination, and seem to arise instantaneously and sometimes even ‘against better judgment’” (p. 2). Lakoff and Johnson refer to this cluster as the “cognitive unconscious . . . not in the Freudian sense of being repressed, but in the sense that it operates beneath the level of cognitive awareness, inaccessible to consciousness and operating too quickly to be focused on” (p. 10).

another realm of thoughts: about breathing, and body position, and knowing where one's body is located, and where one's body stops and someone else's body starts – those are mental processes, too. So there are literally hundreds, maybe thousands of different instances of mental activity going on continuously, of which we are not consciously aware, and cannot be. It is not a matter of needing to raise them to conscious thought. In truth, if we were constantly aware of all of those brain activities, we would be absolutely incapable of conducting a meaningful life. The vast preponderance of human thinking is not conscious and has nothing to do with what we consider to involve logic or reason. It has to do with intuitive takes – on ourselves, on the world, on the people and the beings around us.

Our conscious, reflective thoughts emerge from these unconscious, non-reflective thoughts:

Reflective beliefs – what we commonly talk about as beliefs – gain their plausibility from 1. their fit with nonreflective beliefs, 2. their fit with reflectively available evidence including memories and experiences (that might be colored by nonreflective beliefs), and 3. their fit with other reflective beliefs that were previously derived in the same way.⁸²

Reflective thought emerges from nonreflective thought without any gaps. It is embedded in non-reflective thinking, both biologically and developmentally, and constantly requires the feedback of nonreflective thought to keep the reflective thought adaptive.

According to this approach to cognitive psychology, the mind is not separate from the brain. The mind is the name for the processing the brain performs. Mind is what brains do. So it is not a separate substance. Mind is not a *thing*; mind is a name we give to a process, in the same way that *love* is not a thing; love is the name we give to a process. As Willard Van Orman Quine insists:

Whatever it precisely may be, consciousness is a state of the body, a state of nerves. . . . Mental states and events are a special subclass of the states and events of the human or animal body.⁸³

Much of Western philosophy, because it denies the biological nature of thought (because, remember, the brain is construed to be a tool for picking up universal reason), thinks of mind as a thing *out there*. Or as a faculty that is *in* the brain, but not *of* the brain. Modern psychology demonstrates that that description is unhelpful in countless large and small ways; because mind is process, and

82 Justin L. Barrett, *Why Would Anyone Believe in God?* (Lanham: AltaMira Press, 2004) 15.

83 Willard Van Orman Quine, *Quiddities: An Intermittently Philosophical Dictionary* (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 1987) 132–33.

that process is biologically determined (neurons fire in a particular way), we process time through neurological exchanges:

Forty times a second an electrical pulse is sent across the brain. Some neuro-scientists currently believe that this pulse regulates the neural firings in the brain and thus many of the body's rhythms. . . . The motion of this pulse is a regular, iterative event that has been hypothesized as being the basis for the correlations among many of our bodily rhythms that give us our intuitive sense of timing and time. The sense of time in us is created by such internal regular, iterative events as neural firings.⁸⁴

The way synapses carry messages molds our perception of time. We see certain ways because of our eyes and our brains functioning together. Because of our shared biology, our perception seems to us to be universal:

To say that cognition is embodied means that it arises from bodily interactions with the world. From this point of view, cognition depends on the kinds of experiences that come from having a body with particular perceptual and motor capacities that are inseparably linked and that together form the matrix within which memory, emotion, language, and all other aspects of life are meshed. The contemporary notion of embodied cognition stands in contrast to the prevailing cognitivist stance which sees the mind as a device to manipulate symbols and is thus concerned with the formal rules and processes representing the world.⁸⁵

Why do all cultures and people agree on so many things? Not because of the dominant opinion that truth is absolute and out there and accessible, but because we all share the same biology. People all over the world are embodied in the same bodies, more or less. We have much more in common than divides us. And that is true of people all over the world. Human beings assume universality to their insights, when in fact those insights are the heritage of sharing a common biology, which produces a particular kind of brain, which then functions the same way in our species all around the world. There are significant cultural differences, I recognize, just as there is great diversity between individual humans. This diversity, too, reflects our biology. Given the vast complexity and plasticity of brain development, each brain is shaped by its individual experiences in life; no two adult brains are alike.

The brain, like the immune system, is a selection system that operates

84 Lakoff and Johnson, *Philosophy in the Flesh*, 138.

85 Esther Thelen, Gregor Schöner, Christian Scheier, and Linda B. Smith, "The Dynamics of Embodiment: A Field Theory of Infant Preservative Reaching," in Paul Bloom and Barbara L. Finlay, eds., *Behavioral and Brain Sciences* 24:1 (2001) 1–34.

within an individual's lifetime. . . . The development of neuronal circuits in the brain leads to enormous microscopic anatomical variation that is a result of a process of continual selection.⁸⁶

Because of shared biology, the vast majority of human insight and perception is shared. This implies that a creature with a very different biology would perceive the world very differently. We can see among non-human species that this is so.⁸⁷ Given that we share a significant portion of our genes with other mammals, considerable commonalities remain. But imagine a space alien; imagine beings with no common genetic heritage, and how different their perception would be.

"Aha!" one might resist, clinging to a Newtonian perspective, "but our perception is really right, isn't it?" There is no neutral place to stand to make that claim. We can never step outside of our own mind, our own embodiment in the particular kinds of bodies we have. We can never step outside of our own biology. In that regard, the early modern philosophers of mind are not wrong; we can't step outside of our own minds and our own knowing. Our "higher" faculties emerge from our embodiedness, as the Talmud notes, "A person should always regard himself as if holiness rests within his intestines" (*b. Ta'an.* 11a).

What we know and how we know are inextricably connected to the biological processing which produces our knowledge. Our knowledge is, therefore, not simply given,⁸⁸ but is constructed precisely because human insight is never separable from human biology:

By constructive, Embodied theorists do not mean to imply that there is no objective, external reality and that everything is subjective. Instead, the point is that a type of mutual specification occurs between the organism and its environment, so that the way the world looks and the way in which the organism can interact with the world is primarily determined by the way the organism is embodied.⁸⁹

Let me provide an example of that embodied perception. We look at a wall and we see wallpaper that is, let us say, green. The dominant approach understands the mind to be a tool for perceiving objective truth. According to this assessment of reality and mind, the green is a property of the wall, and my mind,

86 Edelman, *Second Nature*, 27.

87 See Thomas Nagel, "What Is It Like to Be A Bat?" *Philosophical Review*, 83 (October 1974) 435–50. See also Colin Allen and Mark Bekoff, "Animal Consciousness," in Max Velmans and Susan Schneider, eds., *The Blackwell Companion to Consciousness* (Malden: Blackwell Publishers, 2007) 58–71.

88 "The cognitivist/classicist assumption is that the world has a set of pre-given features that are passively retrieved from the environment through representations that mirror the world." Monica Cowart, "Embodied Cognition," *The Internet Encyclopedia of Philosophy* (<http://www.iep.utm.edu/e/embodcog.htm>), July 22, 2005, 9.

89 Cowart, "Embodied Cognition," 9.

through my eyes, is able to process the color to make an objectively correct assessment of the wall. But reality turns out to be more interactive and relational than that assessment might suggest. Green is not in the wall; green is what happens when human eyes look at this wall, process the wall neurologically, and then translate that perception into brain messages.

Now that novel insight means that the old dichotomy between objective and subjective requires serious reconsideration. In the dominant view, objective is truth; subjective is feelings, which is to say, false, or at best, not true. In our previous example, claiming that the wall is green reports an objective fact. Even if no one was looking at this wall, it would be green. The greenness is a property of the wall, not a perception of mine while regarding the wall. It turns out that dichotomy is just scientifically indefensible.⁹⁰ Green is the way my eyes perceive the wall, and since other people have more or less the same eyes I do, they will nod their heads and say, well, of course, it's green!

Here it is important to pause to recall that what is perceived as part of a green range of color does not describe a single scientific reality, but several. Green, like any color, is many different phenomena.⁹¹ Scientifically what green is in light is not the same thing as green in pigment. And we see a number of different objects that we all call green, that actually are quite different phenomena:

Color concepts are "interactional"; they arise from the interactions of our bodies, our brains, the reflective properties of objects, and electromagnetic radiation. Colors are not objective; there is in the grass or the sky no greenness or blueness independent of retinas, color cones, neural circuitry, and brains. Nor are colors purely subjective; they are neither a figment of our imaginations nor spontaneous creations of our brains.⁹²

90 That is not to say that the notions of objective and subjective are never applicable, but they do not form an ironclad, mutually-exclusive dichotomy as a way to organize all perception or description.

91 Lighting conditions, wavelengths of electromagnetic radiation, color cones, and neural processing. Lakoff and Johnson, *Philosophy in the Flesh*, 24.

92 Lakoff and Johnson, *Philosophy in the Flesh*, 24–25. See also Barry Maund, "Color," in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Fall 2008) <http://plato.stanford.edu/archives/fall2008/entries/color/>; "The major problem with color has to do with fitting what we seem to know about colors into what science, particularly physics, tells us about physical bodies and their qualities. More specifically, we experience color as an intrinsic feature of the surfaces of physical bodies, or as a property spread throughout a volume, for example, of wine. But, or so it seems, the physical account of these physical objects finds no place for such qualities. It is this problem that historically has led the major physicists who have thought about color, to hold a common view: that the colors we ordinarily and naturally take objects to possess, are such that physical objects do not actually have them. Oceans and skies are not blue in the way that we naively think, nor are apples red, (nor green). Colors of that kind, it is believed, have no place in the physical account of the world that has developed from the 16th Century to this century. Physicists who have subscribed to this doctrine include the luminaries: Galileo, Boyle, Descartes, Newton,

Objective/subjective is not a helpful dichotomy, because my seeing the wall as green is not my subjective projection.⁹³ I am not inventing something about the wall. Nor is it a one-on-one correspondence of my perceiving what is objectively true without my biological engagement. It is rather what happens between the wall and me. It's the coming together of an unattainable objectivity (because I am embodied) with a subjective process that is not purely autonomous. As Lakoff and Johnson note, "Philosophically, color and color concepts make sense only in something like an embodied realism, a form of interactionism that is neither purely objective nor purely subjective."⁹⁴ Our knowledge of the world and how we come to know forces us to transcend the objective/subjective dichotomy.⁹⁵

So, the distinction is almost never between objective, and therefore, true, meaning absolutely corresponding to something outside of yourself in a simple one-on-one way, or completely subjective (it is just your inner construal and it has nothing to do with reality). The scientific information reinforces that our perceiving of the world is a biological process, an interaction. This is true of taste, for example; taste is not *in* the food. It is the reaction of our nerves to particular food substances that engenders what our brain turns into a perception we experience as taste. Does food have a taste if nobody eats it? No, it does not. The taste is not in the food. The taste is in the food hitting the tongue, being processed by the brain. In every realm of human knowing, the simple dichotomy of objective/subjective gives way to a relational, interactive and embodied realism. As the talmudic sage, Beruria, reminds us, "If your learning is arranged in all your two hundred and forty-eight limbs, then it is secure. If not, it is not secure" (*b. Erub.* 54a).

PART OF THE SOLUTION, NUMBER TWO

CONCEPTUAL METAPHOR AND INTERACTIVE RELATIONSHIP

Once we navigate free from the Scylla and Charybdis of the objective/subjective dichotomy, then how we understand our use of language must shift as well. In several versions of the dominant paradigm, language articulates an objec-

Young, Maxwell and Helmholtz. In this doctrine, they were joined by a number of fellow travelers, including most famously, John Locke."

93 The perception may be subjective vis-à-vis our entire species, but it is not purely the private fantasy of one individual human. Seeing green is not a rational, conscious activity. One would be aware that this wall was green before consciously thinking to notice the wall. That is the kind of thinking that is embodied realism — it happens in one's brain as a biological interaction.

94 Lakoff and Johnson, *Philosophy in the Flesh*, 25.

95 This insight will have enormous impact in the realm of Jewish theology. Virtually all Jewish theologians, when they address the giving of the Torah, discuss it in terms of a Neoplatonic dichotomy. Is it objectively God's words? Or is it the folkways of the Jewish people? Note that early Reform stands on a dominant dichotomy of subjective/objective, as does ArtScroll with its literal-

tive description of a universal, transcendent truth. Positivists built an entire philosophical agenda on this dichotomy, and Chomsky and his ideological heirs continue to hold to a notion of language as abstract and universal.

There is a term for language that is neither purely subjective, nor purely objective. We call such words “metaphor”:

A metaphor is an implied comparison (as in “a marble brow”), in contrast to the explicit comparison of the simile (“a brow white as marble”).⁹⁶

In the dominant setting for the study of language, we are supposed to assume that the only occasion for language to be metaphoric is as poetry. We are trained as readers not to take language literally when reading a poem:

Metaphor is common at all levels of language and is fundamental in poetry, in which its varied functions range from merely noting a likeness to serving as a central concept and controlling image.⁹⁷

But it turns out that metaphor functions well beyond the context of poetry, or even of literary art as a whole:

Metaphor is not merely the classification of familiar things under novel concepts. It is a reflection of the way human beings directly engage their world, the result of a bare human propensity to see some things as naturally grouped with others or as usefully conceived in comparison with others.⁹⁸

Virtually all human discourse, all abstract thought, is metaphoric. To help grasp this cornerstone of human conversation, let us try to consider time without invoking metaphor. When we talk about the past and the future we talk about the *flow of time*. That is a metaphor, since time does not actually *flow*. We talk about putting the *past behind us*; that is also a metaphor, isn't it? Time does not go in front or in back.⁹⁹ That is how we talk about time – time speeds up, time slows down – we talk about time in two large metaphoric clusters: We talk about

ism. For both the Liberals and the Traditionalists, the two available choices are objectively real, or subjective and, therefore, private. The embodied realism I am sketching makes possible a third way. The choice is virtually never between objectively true or subjective; it will almost always entail an interaction between the external and the biological, producing a conviction that is shared because it is biologically grounded; shared by our species as a whole, or our people as a whole.

96 Simon W. Blackburn, “Metaphor,” *Encyclopedia Britannica Online*, <http://www.search.eb.com/eb/article-9052289/>, 28 June 2007.

97 Blackburn, “Metaphor.”

98 Simon W. Blackburn, “Language, Philosophy of,” *Encyclopedia Britannica Online*, <http://www.search.eb.com/eb/article-257844/>, 28 June 2007.

99 Notice that when we talk about the past, we always point backwards. Why is it that that is where the past is, and forward is where the future is? Could that be because it is where our eyes are? And what we have not yet experienced, we are going to advance that way to encounter?

time as though we are standing still and time is moving, or we talk about time as though time is standing still and we are moving. Those two metaphoric clusters are the only ways that people can talk about time. Now time, you would think, is something that is objectively real. We are not considering the role of time in philosophy, or in poetry, or art, or mythology. We are simply considering time itself, the phenomenon. Time is a feature of the objective universe, is it not? Yet we cannot have a conversation about time without invoking metaphor.

How about consciousness? Can we discuss that we humans possess awareness in purely literal speech? I am willing to bet that we cannot. It turns out that virtually all abstract discourse is metaphoric. Economists discussing the economy, politicians discussing politics, people discussing war and love, invoke metaphor to advance these conversations. So can one articulate non-metaphoric expressions? I suppose so, but they tend to be rather trivial and concrete. And any time we discuss something of significance, abstraction, or nuance, we wind up using metaphoric language. Perhaps this is why "some philosophers and linguists have held that all speech is at bottom metaphorical."¹⁰⁰

Abstract human thinking is processed and expressed as conceptual metaphor. These metaphors are a matter of thought, not merely of language.¹⁰¹

What does an awareness of the function of metaphor imply? Metaphors are generally neither transparently true (objective) nor simply false (subjective). As Blackburn reminds us, "[Metaphor] is most importantly not a product of reason or calculation, conscious or otherwise."¹⁰² That dichotomy is not a useful categorization for analyzing metaphor. Metaphors are helpful or not helpful. Or if you want to hold to the terms "true" and "false," then we have to just redefine what we mean by them. "True" no longer means corresponding precisely to an objective truth separate from our embodied perception of it. What we now mean by "true" is that we consider some claim to be true to the degree that it helps us live in the world, integrate what we perceive, predict outcomes, and is supported by diverse sources of knowing. True is what helps us navigate on many levels. Understanding conceptual language as metaphor means transcending the dichotomy of objective/subjective yet again; conceptual metaphor is the integration and modification of both. It is us processing and perceiving

¹⁰⁰ Blackburn, "Language, Philosophy of."

¹⁰¹ Joseph E. Grady, Todd Oakley, and Seanna Coulson, "Blending and Metaphor," in Gerard J. Steen and Raymond Gibbs, eds., *Metaphor in Cognitive Linguistics* (Philadelphia: John Benjamins, 1999) 1. Lakoff and Johnson use the term "conceptual metaphor." Others use the labels "analogy" or "conceptual blending." One is struck by the similarity of this concept to Max Kadushin's phrase, "value concept," which he held to be the building block of biblical rabbinic thought and expression. For Kadushin, this organic, relational model of thinking was prior to logic, and more useful than what he called Greek linear thought for assertions of meaning and ethics.

¹⁰² Separately, Blackburn, "Metaphor," reminds that "Many critics regard the making of metaphors as a system of thought antedating or bypassing logic."

the external world through our biological nature, as the psalmist observes, *Truth springs up from the earth* (Ps 85:12).

For the second time, we have transcended a thought structure in which either A is true or B is true, either an insight is subjective or objective, either it is a fact or a value, to a new expression of insight in which A possesses value *and* B possesses value, and they are inextricably entwined. This crucial understanding offered by embodied philosophy is made complete by the recognition of abstract thought as embodied metaphor. A and B, previously understood to be incompatible contraries, are now seen as mutually supportive and compatible assertions — complementary or dipolar, if you will.

That shift from transcendental, universal disembodied reason to embodied conceptual metaphor, and the concomitant transition from a dichotomy of A or B to A/B offers a couple of significant reconfigurations:

There is no such person as a Kantian autonomous individual, a person whose core identity and pure essence is revealed once stripped of all external interaction. a. There is no essence anymore; b. Once you strip people of all of their interactions, they are gone! There was never a moment when we are not interacting in the world: Each of us was hearing our parents' voices in utero. While in the womb we were interacting with our mothers on a biological level. From the moment we were born, people were intruding into our consciousness, shaping our consciousness, doing things with us, to us, and for us. Each baby gains a multiplicity of conscious and subconscious thoughts about the world she lives in, so that prior to the time she has her first coherent sentence and her first rational thought, she is already herself. That Kantian individual tried to autonomously use reason to figure out *the* truth, or *the* duty, but it turns out to be a figment of Kant's imagination. Or, to use our embodied, metaphoric understanding, that autonomous Kantian is a metaphor that was very helpful in that time and place. A lot of good continues to emerge from Kant's insights and rigor. But Kant's insights are not true as an articulation of an objective, transcendent reality, which is what he thought they were (as a voice of the dominant philosophical tradition). The image of an autonomous, deontologically-motivated person provides a helpful set of metaphors that continue to enable many of us to better navigate our world.

This new embodied metaphor system also means that freedom is neither absolute nor is it illusory. Freedom is real, and is always constrained. We are constrained by what our bodies cannot do, or can do; we are constrained by what our economy can support or cannot support; we are constrained by our biology, and our community, and our culture, and by what we do and do not know, and by how much time we have, and how much energy we have, and how many things people are demanding of us. So there is no such thing as

absolute freedom. That too becomes a metaphoric integration of both the external and the processing.

Having broken down the wall between objective and subjective, having knocked down the possibility of knowing the objective objectively, in a universal, non-culturally limited way; having abandoned the artificial idea that one can employ literal language to correspond to an external truth, what that also means is that there is no longer a strict dichotomy between *ought* and *is*.¹⁰³ There are indeed instances when one can describe something as exclusively a fact, and there are occasions when you can say something that is just a value; but most of the time, facts are themselves value-laden and values are so fact-dependent that a mutually-exclusive classification is virtually impossible, and there is no such absolute dichotomy. It is not that one precludes the other. In most instances we are considering value-saturated facts and fact-permeated values. Again, not A or B, but A and B intertwined.

If the bulk of our conversation is metaphoric, and if the bulk of our thinking is an interaction between what is external and our biological processing of it, then there is no longer simply true/false. Metaphors are intrinsically pluralistic – there are multiple metaphoric ways to articulate the same perception, each revealing a slightly different facet of the same tenor.¹⁰⁴ Multiple metaphors can be helpful simultaneously. This should be a huge relief to those of us who just do not like to get into winner-take-all arguments. Because it means that the argument about whose form of faith is objectively better (or corresponds literally to God's will) is based on the dominant framework and is a colossal misunderstanding. Whether Christianity is true or false; whether Hinduism is true or false¹⁰⁵ – these arguments are also a colossal waste of time based on a dominant misunderstanding of the world and how we live in it. If ideology, like abstract conceptualization, is a cluster of metaphor-systems, then the issue is not whether they are objectively true or false. I guess on some level, technically, none of them are literally true, but then neither is science, which is also a cluster of metaphor-systems.¹⁰⁶ Nothing can be known as

103 A distinction, sometimes, yes. But not a binary dichotomy such that a statement is either exclusively a value (and therefore not a fact) or exclusively a fact (and therefore involves no values). For further discussion, see Hilary Putnam, *The Collapse of the Fact/Value Dichotomy and other Essays* (Cambridge: Harvard Univ. Press, 2002).

104 "Tenor" is the subject to which attributes are described. Lakoff refers to this as the "target."

105 Or Freudian vs. Jungian therapy, or liberal vs. conservative ideology (as opposed to policy), or classical vs. rap music, etc.

106 Gravity is not literally a field. Light is neither literally particle nor wave. As Nagel notes, "There is of course no question whatever that the terminology of 'particles' and 'waves' is suggestive and heuristically valuable. Nevertheless, the usefulness of this terminology must not hide from us the fact that it is employed analogically and is not to be construed literally." Ernest Nagel, *The Structure of Science* (Indianapolis: Hackett Publishing Company, 1979) 300.

objectively true, because we cannot ever step outside of our bodies to verify that perception. However, some claims do remain false. Still, we measure the worth of ideology, as with any conceptual metaphor, by how it allows us to navigate the world; to integrate what we know from diverse sources, to anticipate outcomes, and to contribute to human (and ecological) thriving. What is needed is a self-conscious sense of critical realism.¹⁰⁷ Deeds, not ideology, should form the yardstick of decency and goodness. As the ancient rabbis teach, "Righteous gentiles have a share in the world to come" (*t.Sanh.* 13:2). The worth of a religion is measured not to the degree to which its theology corresponds to objective reality, but to the degree that it produces sensitive, empathic, engaged, loving people, and to the degree that it contributes to a world of justice and compassion.

SUPPORT FOR THE SHIFT A BRIEF EXCURSUS FROM THE NATURAL SCIENCES

We have already rejected a strict dichotomy separating

Objective/subjective
Spiritual/material
Mental/corporeal
Fact/value

and moved from identifying perfection as a static (eternal) being which reflects a transcendental universal ideal toward a dynamic (ephemeral) becoming which is embodied. This particular integration finds support across the realms of biology, cosmology, relativity, and quantum physics. While a comprehensive survey is not feasible within the constraints of an essay, certain salient correlations support a shift to an embodied conceptual metaphor.

The first area to consider is *biology and Darwinian evolution*.¹⁰⁸ Darwinian evolution, contrary to popular fears and misconception, need not be destructive of religious values or a sense of awe, wonder, and meaning.¹⁰⁹ Evolutionary

107 Barbour, *Myths, Models and Paradigms*, 117. See also Polkinghorne, *Belief in God*, 44–45, 52–53 and his *Quantum Physics and Theology: An Unexpected Kinship* (New Haven: Yale Univ., 2007) xi. Polkinghorne terms such a goal, "verisimilitudinous." See also Janet Soskice, "Knowledge and Experience in Science and Religion: Can We Be Realists?" in Robert John Russell, ed., *Physics Philosophy and Theology: A Common Quest for Understanding* (Notre Dame: Notre Dame Press, 2000) 173–83.

108 A recent Jewish consideration of the topic, often from a history of ideas perspective, can be found in Geoffrey Cantor and Marc Swetlitz, eds., *Jewish Tradition and the Challenge of Darwinism* (Chicago: Univ. of Chicago Press, 2006).

109 Many well-grounded works of theology exist that do not compromise or distort either the biology or the religious perspectives. Among them, Niels Henrik Gregersen, *From Complexity to Life: On the Emergence of Life and Meaning* (Oxford: Oxford Univ. Press, 2003); Joan Roughgar-

theory affirms there are no gaps, in at least two senses: 1. From the moment life first begins until now, there is no gap; every living thing flows from its own prior states.¹¹⁰ 2. Every living species is related to every other living species. We are one, big, family, all living things. Biology is relational.

Contrary to the popular association of evolution with random chaos, in evolution there is both randomness *and* participatory intentionality or design.¹¹¹ Many of evolution's religious opponents forget the crucial role played by creaturely intentionality and choice. As Michael Ruse notes,

Because of the nature of organisms — their distinctive complexity — the design metaphor is appropriate and highly fruitful. The argument to organized complexity is precisely that — an argument to organization, to design (taken as a metaphor). This gives rise to a forward-looking kind of understanding — understanding in terms of final causes. A powerful kind of understanding that raises interesting and fruitful questions and stimulates important answers. It should be celebrated, not regretted.¹¹²

Genetic mutations are indeed random, but natural selection is intentional. Notice the metaphor "selection" with its expression of deliberate, voluntary choice. Evolution is not about a purposeless universe; it is about the dynamic, relational interplay between the random and the intentional, random and deliberate. Rather than one or the other extremes of a strict dichotomy, evolutionary dynamics shuttle between both tropes. Once again, our best take on reality evokes complementarity, an A *and* B explanation of the world, rather than A *or* B. Once again reality involves the relationships that give us our context, our constraints, and our possibilities. And its continuous emergence in a series of interrelated biological forms speaks to our embodied condition and the absence of any ontological gap.

Cosmology supports that dynamic, relational metaphoric understanding as well. There are no gaps:

den, *Evolution and Christian Faith: Reflections of an Evolutionary Biologist* (Washington, D.C.: Island Press, 2006); Michael Ruse, *Darwin and Design: Does Evolution Have a Purpose?* (Cambridge, Mass.: Harvard Univ. Press, 2003); Robert John Russell, William Stoeger, and Francisco Jose Ayala, *Evolutionary and Molecular Biology: Scientific Perspectives on Divine Action* (Notre Dame: Univ. of Notre Dame Press, 1998); Karl Schmitz-Moorman, *Theology of Creation in an Evolutionary World* (Cleveland: The Pilgrim Press, 1997).

¹¹⁰ See Francisco Ayala, "The Evolution of Life," in Russell, *Evolutionary and Molecular Biology*, 45–53, and "God the Magician," in Kenneth Miller, *Finding Darwin's God: A Scientist's Search for Common Ground Between God and Evolution* (New York: HarperCollins Publishers, 1999) 81–128.

¹¹¹ "Design" in evolutionary discourse is self-consciously metaphoric, a nuance we are now prepared to expect. For an extensive discussion of this term as metaphor in Darwinian discourse, see "Design as Metaphor," in Ruse, *Darwin and Design*, 274–89.

¹¹² Ruse, *Darwin and Design*, 288–89.

A notable aspect of this picture is the seamless character of the web which has been spun on the loom of time: the process is continuous from beginning to end and at no point does the modern natural scientist have to invoke any non-natural causes to explain what he observes or infers about the past. . . . It would be extremely unwise for any proponent of theism to attempt to find any gaps to be closed by the intervention of some non-natural agent, such as a god.¹¹³

Everything flows from the moment before it, continuously, from the beginning.¹¹⁴ It means, as is the case with biology, that we are all family, but on a much larger cosmic level. We are all stardust, as Walt Whitman exclaims, "A leaf of grass is no less than the journey work of the stars."¹¹⁵ Everything in the universe is made out of the same stuff as everything else. We also know from cosmology the staggeringly improbable way in which all of the numbers seemed to have lined up precisely right to produce first cosmos, then life, then consciousness.¹¹⁶

It looks as if the early cosmic density, and the associated expansion speed, needed tuning with immense accuracy for there to be gas clouds able to condense into stars: tuning to perhaps one part in a trillion trillion trillion trillion trillion. Further, the strength of the nuclear weak force had to fall inside narrow limits for the Big Bang to generate any hydrogen (which was needed for making water and for long-lived, stable stars like the sun) and for the creation of all elements heavier than helium. Also the strength ratio between electromagnetism and gravity needed extremely accurate tuning, perhaps to one part in many trillion trillion, for there to be sun-like stars. Again, the existence of chemistry seemingly demanded very precise adjustment of the masses of the neutron, the proton, and the electron.¹¹⁷

From the strong force to the weak force, gravity, electromagnetism, and the presence of hydrogen in the universe – everything has been fine-tuned so that

113 Arthur Peacocke, *Creation and the World of Science: The Re-Shaping of Belief* (Oxford: Oxford Univ. Press, 2004) 60–61.

114 Andrew R. Liddle, "The Very Early Universe," in Peter Coles, ed., *The Routledge Critical Dictionary of the New Cosmology* (New York: Routledge, 1999) 37–56.

115 Walt Whitman, "Song of Myself" in *Leaves of Grass*, stanza 31, in James F. Miller, Jr., ed., *Complete Poetry and Selected Prose* (Boston: Houghton Mifflin Company, 1959) 46. Astrophysicist Owen Gingerich says, only a little more prosaically, "You and I and the Allende meteorite are made of star stuff, recycled cosmic wastes." Owen Gingerich, *God's Universe* (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 2006) 56.

116 Martin Rees, *Just Six Numbers: The Deep Forces That Shape the Universe* (New York: Basic Books, 2000).

117 John Leslie, "The Meaning of 'Design,'" *Cosmic Questions: Annals of the New York Academy of Sciences* 950 (2001) 130.

if any of these major factors had been slightly off by a little bit, there would be no life. There would be no awareness. This remarkable, statistically improbable string of “lucky” breaks confronts each of us, and each has to decide how to assess that improbability.

Transcending the dichotomy of objective/subjective, and the exclusive choice of either predetermined or untrammelled freedom, contemporary approaches to cosmology suggest a relational dynamism in which there are constraints (metaphorically known as “laws”) and expansive possibilities for how those laws are freely applied:

If something akin to human intelligence had been able to witness the original “hot big bang” some 12 or so billion years ago, would it ever have predicted from the properties of the quarks, the laws of quantum theory and of gravity, and the nature of the four fundamental forces that the process would complexify and self-organize over the aeons in at least one small range of space-time to become persons who can know not only the processes by which they have emerged but also each other and could be creative of truth, beauty, and goodness?¹¹⁸

The cosmos is uniquely calibrated to produce life and consciousness, yet also provides sufficient room within the natural “laws” to allow for chance and choice. The constraints of the cosmos make possible the divine/human virtues of creativity, generosity, and righteousness. As with the findings of biology, in cosmology too our best take on reality evokes complementarity — an *A and B* explanation of the world, rather than *A or B*. Once again reality involves the relationships that give us our context, our constraints, and our possibilities. And its continuous emergence in a series of interrelated cosmological developments speaks to our embodied condition and the absence of any gap.

We find the same insights in contemporary trends in physics too. We know from the *Theory of Relativity* that things are not known as entities in isolation, they are known always in relationship to something else. The universe is dynamic and relational:

Space and time are inseparable, mass is a form of energy, and gravity and acceleration are indistinguishable. There is an interplay between the dynamics of matter and the form of space, a dialectic between temporal process and spatial geometry. Matter is, if you will, a wrinkle in the elastic matrix of spacetime. Instead of separate enduring things, externally related to each other, we have a unified flux of interacting events.¹¹⁹

118 Arthur Peacocke, “Complexity, Emergence, and Divine Creativity,” in Gregersen, *From Complexity to Life*, 197.

119 Barbour, *Religion and Science*, 180.

We are always within a particular relationship in the knowledge that we have. The facts reveal themselves to us only within the context of our relationship to them, only within the context of how we are situated. How familiar this sounds! Again, notice that the objective/subjective dichotomy does not pertain. Relativity reveals that we can only know something outside of ourselves through our own connection to that object; it is about relationship. Entities are related to each other in a much more profound way than we had previously surmised and they are known to us only in the context of their relationship to each other and to us. That old idea of knowing an entity objectively is hopelessly inadequate in the face of Relativity theory. But the theory posits a relational realism – there is a world to know through relationship – but only in relationship. Relativity doesn't collapse into solipsistic subjectivity either:

Its name notwithstanding, Einstein's theory does not proclaim that everything is relative. Special relativity does claim that *some* things are relative: velocities are relative; distances across space are relative; durations of elapsed time are relative. But the theory actually introduces a grand, new sweepingly absolute concept: *absolute spacetime*.¹²⁰

We don't know the world through the rigid dichotomy of subjective/objective; there is no such place to stand. Rather, knowing emerges through relationship: our own location in spacetime relating to other aspects of spacetime. A world known through our own embodied knowing – that is the best way to explore and articulate the world, and to integrate the latest findings of evolutionary biology, cognitive science, physics, and cosmology.

We transcend these old dominant dichotomies when we explore the insights of quantum physics as well. We know from quantum physics that particles associate in ways that we would never have anticipated through formal logic. Two particles linked in motion now separated in space, continue to influence each other across breaks of space/time where they do not have physical contact. As John Polkinghorne explains:

There is an irreducible degree of non-locality present in the physical world. Quantum entities that have interacted with each other remain mutually entangled, however far they may eventually separate spatially. It seems that nature fights back against a relentless reductionism. Even the subatomic world cannot be treated purely atomistically.¹²¹

Even beyond where the speed of light can reach, these entities continue to impact upon each other. Weird? Yes, in the dominant schema. But the quantum

120 Brian Greene, *The Fabric of the Cosmos: Space, Time, and the Texture of Reality* (New York: Vintage Books, 2005) 51.

121 Polkinghorne, *Quantum Theory*, 80.

world is one in which “its reality is something very different from the naïve objectivity”¹²² of the everyday world. It is a reality in which the position and perspective of the observer play an active role in what will be ultimately observed. This relational blurring between observer, observing, and observed reiterates what we have come to assert throughout this essay – that we know through our own particularity that our knowing is not some transcendent universal reason that knows essences, but is an embodied realism, that knows in relationship and is expressed through conceptual metaphors. As Polkinghorne summarizes:

There is no universal epistemology, no single sovereign way in which we may hope to gain all knowledge. . . . There is a kind of epistemological circle: how we know an entity must conform to the nature of that entity; the nature of the entity is revealed through what we know about it.¹²³

Chaos theory supports this same complementary/dipolar understanding. We know that chaos and order are interrelated. Chaotic systems produce remarkable order; and ordered systems fall apart.

The last piece of scientific evidence to consider is *the theory of Emergence*, “that general feature of natural processes wherein complex structures, especially in living organisms, develop distinctively new capabilities and functions at levels of greater complexity.”¹²⁴ Rather than succumbing to a totalizing reductionism, in which all phenomena are held, in principle, to be explicable solely through the most basic level of physicality, there are a significant group of scientists, philosophers, and theologians who call our attention to the way the cosmos appears to be self-organizing, increasing in complexity, and creative. As Paul Davies explains, “At each level of description, from atoms, up through molecules, cells, organisms, and society and culture, genuinely new phenomena and properties emerge that require laws and principles appropriate to those levels.”¹²⁵

It turns out that the universe seems to consist of a series of embedded layers of reality that cannot be explained completely by the prior order of embeddedness. We articulate how atoms work and how atoms are structured, but we cannot ultimately explain molecular behavior in terms of atoms. That is what is meant by “embedded.” Molecules are embedded in an atomic layer, but cannot be satisfactorily explained *as molecules* in terms of that atomic layer. That same novelty and creativity emerges at the next level as well. Let us talk not about molecules, but proteins. One cannot explain proteins purely in terms of

¹²² Polkinghorne, *Quantum Theory*, 84.

¹²³ Polkinghorne, *Quantum Theory*, 87.

¹²⁴ Peacocke, “Complexity, Emergence, and Divine Creativity,” in Gregersen, *From Complexity to Life*, 188.

¹²⁵ Paul Davies, “Introduction: Toward An Emergentist Worldview,” in Gregersen, *From Complexity to Life*, 5.

the molecules that made the protein. One cannot explain what cells are purely in terms of the protein structures that comprise the cells. One cannot explain bodies purely in terms of the cellular level, and one cannot explain consciousness purely in terms of the body. Nor can one explain communities solely in terms of the people who comprise the community, nor the species of its members. The universe seems to be a series of systems embedded in other systems, but we cannot explain the system by the prior system in which it is embedded. That is called “emergence.” Things emerge from prior systems that cannot be explained by what they are embedded in, and they are remarkable, like consciousness. To explain consciousness purely in material terms is impossible; but notice that emergence, like evolution and cosmology, posits both ontological continuity (no gaps) and novelty:

The universe is neither a random gas nor a crystal, but a menagerie of coherent, organized, and interacting systems forming a hierarchy of structure. Nature is thus a potent mix of two opposing tendencies, in which there is pervasive spontaneity and novelty, providing openness in the way the universe evolves but enough restraint to impose order on the products. The laws of nature thus bestow on the universe a powerful inherent creativity.¹²⁶

One might even suggest that, rather than construing novelty and order as opposing tendencies, both are in relation with each other through creativity. Not a monopolar description (A but not B), but a complementary description (A and B and C) permits us to articulate and to conceive a fuller sense of the world, humanity, ourselves, and the web of relationships between and among them.

PANENTHEISM

EMBODIED, METAPHORIC, AND RELATIONAL

Standard philosophical theism exhibits all the fatal flaws that permeate the dominant nexus of ideas as a whole — the notion of a transcendent universal truth that reason is able to grasp through the faculty of mind, apprehended through abstract logic in words, maintaining a dichotomy between spirit/ideal versus material/corporeal, and because of that dichotomy, forced to view the divine through a monopolar lens. Expressed in monopolar terms, God is omniscient, omnipotent, and omnibenevolent, as well as eternal and impassible. These assertions generate insurmountable paradoxes rendering them self-contradictory, and opening an unbridgeable chasm between this version of theism and any scientific endeavor. As David Nikkel notes:

¹²⁶ Davis, “Introduction,” 10.

Classical theism, in affirming certain divine attributes stemming from ancient Greek philosophy – immutability (unchangeability), impassibility (to be unaffected by another), and eternity (in the sense of strict timelessness) – does not permit God to be in genuine relation to the world.¹²⁷

How could a God, whose perfection is manifest as static and unchanging, love? The answer is, such a God cannot. Rambam admits that and Spinoza knows it too.¹²⁸ So what about a God whose essence is simple oneness, but whose interaction is dynamic? For God to love, God has to be open to feeling the feelings of the beloved. If my feelings change and God loves me, then God has to be able to feel my changing feelings, and that means God changes. The logic is inescapable. God is not to be equated to the relationship, but God is only known within relationship. What we know about God in relationship (the immanent) is no less consequential than the aspects of God that we cannot know in relationship (the transcendent). The relationship occurs within spacetime, and the manifestation of God in relationship is, therefore, within spacetime: open to temporality, to becoming.

These conclusions mean that, instead of having to select one pole within a rigid dichotomy, God can be within time and beyond time; God encompasses the cosmos and God transcends the cosmos. There is no logical reason compelling God to be exclusively one or the other. Recognizing that God can be both – in some manifestations within time, in some modes of being, beyond spacetime, erases 1,500 years of fruitless philosophical gerrymandering. The answer can be “both” God, on God’s own, is beyond time. God, entering into relationship, is within time. Multiple manifestations work for people, so why would they not in a supremely excellent way for God as well? A human author can be writing an essay while simultaneously anticipating what needs to be done when the essay is completed, both at the same time. This complementarity also means that

127 David H. Nikkel, “Panentheism,” in J. Wentzel Vrede van Huyssteen, ed., *Encyclopedia of Science and Religion* (2 vols.; New York: Macmillan Reference USA, 2003) 2:642.

128 “There is no relation between God, may He be exalted, and time and place; and this is quite clear. For time is an accident attached to motion. . . . Motion, on the other hand, is one of the things attached to bodies, whereas God, may He be exalted, is not a body. Accordingly there is no relation between Him and time, and in the same way there is no relation between Him and place. The subject of investigation and speculation is therefore the question whether there is between Him, may He be exalted, and any of the substances created by Him a true relation of some kind so that this relation might be predicated of Him. It is clear at the first glance that there is no correlation between Him and the things created by Him” (Rambam, *Guide of the Perplexed*, 1:52, 117). “In nature there is nothing contingent, but all things have been determined from the necessity of the divine nature to exist and produce an effect in a certain way. . . . By natura naturans we must understand what is in itself and is conceived through itself . . . that is, God in so far as He is considered a free cause. . . . By natura naturans I understand whatever follows from the necessity of God’s nature” (Spinoza, *Ethics*, I:29).

we can recognize God as “within” the world (that’s a metaphor) and beyond it (also a metaphor), simultaneously. So the old dominant theism

Insisting that God is radically separate and different in kind from the world
That God’s oneness is static and unchanging
That God is in no way influenced by the world

is an unnecessary metaphor choice. We do not have to choose one pole of the dichotomy or the other. We can affirm that there are aspects of God to which the category of spacetime does not apply and that there are aspects of God for which the category of spacetime very much pertains.

Rejecting the literalism of the dominant system liberates theology from the paradoxes, disjunctions, and distractions it entails. God is no longer held to be changeless, unaffected, nor timeless. Instead, because we recognize our conceptual language as embodied, relational, and metaphoric, our understanding of God will be embodied, relational, and metaphoric. Instead of maintaining the grip of monopolarity, that God is A and therefore not B, we can permit ourselves the harvest of complementarity — the conceptual embodied metaphor of God as supremely A *and* B. Rather than the brittle dichotomy of subjective/objective, which we have seen fails in our attempt to describe what we know of the world around us, let us also recognize that the subjective/objective dichotomy precludes what we know of God as well.

This understanding of the relationship of the divine and the world is generally known as “panentheism,” from “*pan* all + *en* in + *theos* God,” all is in God. Anthony Thiselton explains:

The term stands in contrast to pantheism. If pantheism identifies God with the whole of reality, panentheism denotes the belief that the reality of the world and the whole created order does not exhaust the reality of God without remainder. Yet it also holds in common with pantheism that God’s presence and active agency permeates the world, actively sustaining it in every part. . . . Panentheism stresses first and foremost divine immanence, but without excluding divine transcendence.¹²⁹

Marcus Borg, with his gift for distilling complex ideas to simple images, states:

Panentheism as a way of thinking about God affirms both the transcendence of God and the immanence of God. For Panentheism, God is not a being “out there.” The Greek roots of the word point to its meaning: *pan*

129 Anthony C. Thiselton, *A Concise Encyclopedia of the Philosophy of Religion* (Grand Rapids: Baker Academic, 2002) 221. Other thinkers have other terms for a similar set of convictions: John Macquarrie refers to it as “dialectical theism,” and David Griffin calls it “naturalistic theism.” Hartsorne sometimes calls it panentheism, and sometimes “dipolar theism.”

means "everything," *en* means "in," and *theos* means "God." God is more than everything (and thus transcendent), yet everything is in God (hence God is immanent). For Panentheism, God is "right here," even as God is also more than "right here."¹³⁰

Thinking and speaking of God as both transcendent and immanent, as right here, there, and nowhere/everywhere, relies on the groundbreaking work of Charles Hartshorne. He reveals that multiple and irreducible nature of the divine as the Panentheistic analogy (we might call it "metaphor"), moving beyond monopolarity to what he terms the theory of dipolarity:

We must equally affirm both poles of each pair of ultimate contraries. But, to avoid contradiction, we must posit two main aspects in the essence of the supreme being, to one of which the one pole supremely applies (with only the limitation of the general inadequacy of all human ideas); to the other aspect, the other pole applies (with the same qualification). What we must strictly negate of both aspects is any nonsupreme form of either pole. . . . According to this doctrine (which may be called the theory of dipolarity), God will, like other individuals, but as a supreme case or super-case, have an individual essence, and he will have accidents as well, so that what is "in him" need not, for all that, be in *his essence*.¹³¹

Hartshorne moves beyond radical simplicity and a static notion of perfection, to a dipolar understanding, in which the divine is supremely excellent in every category. This signals a great advance in liberating God's relationship to the world from a Procrustean choice of either A or B. God is now supremely excellent in A and supremely excellent in B.

But Hartshorne still speaks within a dominant framework in which language remains the literal expression of a transcendent truth. The missing piece, which would broaden Hartshorne's notion of Panentheism yet again, is that of embodied metaphor for abstract expression. In the realm of metaphor, of course both A and B can bear insight, explain what is otherwise inexplicable, express coherence and pattern. In that sense, both A and B express "truth." But not only A and B, but C as well, and D and so on. "As the great German physicist Werner Heisenberg (1901–76) wrote, 'We wish to speak in some way about the structure of atoms, but we cannot speak about atoms in ordinary language.' Our language is limited by our bipolar perception of the world, which, of course, includes the wave-particle polarity. . . . The quantum reality transcends our metaphors."¹³²

130 Marcus Borg, *The God We Never Knew: Beyond Dogmatic Religion to a More Authentic Contemporary Faith* (San Francisco: HarperSanFrancisco, 1997).

131 Hartshorne and Reese, *Philosophers Speak of God*, 4.

132 Marcelo Gleiser, *The Dancing Universe: From Creation Myths to the Big Bang* (New York: Plume, 1998) 229.

With the recognition of the biologically generated metaphor structure of abstract human thought, we move beyond dipolar descriptions to complementary metaphoric conceptions. We may often express these multiple characterizations in binary pairs, but that again is a reflection of human thought and the human use of language, rather than a projection that the world (or God) is intrinsically dipolar. No longer simply true or false, our statements have both elements of utility and elements of coerced obstruction. No longer exclusively subjective or objective, our statements express the way we process and experience the world around us, a critical realism.¹³³

The Zohar illumines the complementarity of the Panentheistic analogy through its deliberately metaphoric language:

Hear in joy concealed words and praise for the Holy Ancient One, concealed of all concealed. Separate, separated from all, yet not separate. For all is joined to it, and it is joined to all. It is all! Ancient of all ancients, concealed of all concealed. Arrayed and not arrayed. Arrayed to sustain all; not arrayed, it is not to be found. (*Zohar, Idra Zuta*, 296b)

Notice, as with the poetic language of psalms, or the narrative majesty of the Genesis creation story, the language itself resists deflating into literal fact, forcing its reader back into the mindset of metaphor – concealed, arrayed, yet not. God is not one extreme of a dichotomy, but the supreme example of every pole. So it is with God's transcendence and God's immanence. In the dominant conceptual scheme (pre-relativity), we want to assume that one view must be correct, one perspective must be really right. Panentheistically, we can now recognize that each is a metaphor. They are both "right" in that both perspectives reveal something important we need to know about the world, about ourselves, and about our relationship to holiness.

God is supremely excellent in all categories. God is supremely excellent in goodness, and supremely excellent in evil. Both. What would a God who is supremely excellent in evil be? One can, I think, understand this excellence in two ways:

1. Given the dynamism of creation and the abundance of the cosmos necessary to self-generate life and then consciousness, it is clear that the processes

133 It is important to stress that this does not reduce our claims to that of fantasy or pure subjectivity. When most people today talk about "subjective," they mean an inner fantasy life. And I do not mean to suggest that our claims and convictions are purely fantasy. I do accept that there is a world we experience. Part of being biologically-embodied is accepting that I have a body; that nature and the cosmos, or even other individuals' consciousness is not a delusion. Moving to complementarity is to recognize embodiedness for ourselves, other creatures, and for creation as a whole. This essay is an attempt to integrate a framework that recognizes the body and the world as real, and recognizing that there are objects external to our brains.

required to generate life can be breathtakingly cruel. We exist because stars exploded their elements into space at their expiration, earthquakes force CO₂ into the crust, ensuring a planet sufficiently warm to host life, mutations that introduce creativity and novelty generally result in tragedy for the affected individual, evolutionary progress for one species means a heightened threat for others, pain is the unavoidable corollary to sentience and a greater capacity for enjoyment and consciousness results in a greater capacity for pain and suffering too. A panentheistic understanding of God recognizes the undomesticated nature of all reality and responds with awe and wonder. Isaiah captures this insight when he exclaims:

*I am the Lord, and there is no one else, there is no God beside Me;
I girded you, though you have not known me;
That they may know from the rising of the sun, and from the west,
that there is none beside me.
I am the Lord, and there is no one else.
I form the light, and create darkness;
I make peace, and create evil;
I the Lord do all these things. (Isa 45:5–7)*

2. A God in whom evil is a tragedy to be grieved and a memory to be supremely retained forever, a God in whom evil is a spur to action, and who is never indifferent to suffering. That would indeed be a God who is supremely excellent in evil, holding the suffering and working to transform it to repentance, healing, justice, and love.

Similarly, we can say that God is a union both of supremely excellent actuality and supremely excellent potentiality. As Hartshorne understands it, God as God's being, is unchanging and eternal, but God as God's becoming, is supremely dynamic and changing, and has to be. The study of being (ontology) has gripped Western thought throughout the Neoplatonic domination. But Whitehead and Hartshorne remind us that being is purely abstraction — we never experience a distilled, static being. Instead, we embody and experience becoming. This, they insist, should be our primary focus — being has a place as a Platonic ideal (a metaphor that can be useful), but only rarely. What we live is not ontology, the static, rarified abstraction of the philosophers' god, but what he felicitously terms "hyathology"¹³⁴ from the Hebrew name for God "Ehyeh Asher

¹³⁴ The term is the neologism of Professor Tetsutaro Ariga, of Kyoto University. As Hartshorne notes, the term is "to indicate that the concrete reality is becoming, not mere being. Ariga and I had agreed that there is in the Bible no ontology, only hyathology." Hahn, *The Philosophy of Charles Hartshorne*, 43.

Ehyeh, I will be what I will be.” The God of the Torah is a God of becoming – dynamic, relating, embodied through covenant, creation, and Torah itself.¹³⁵

If God is experienced in the mode of becoming, then one of the implications of the Panentheistic metaphor is a recognition that the universe manifests its Creator in terms of dynamism, freedom, and creativity.

An epiphany enables you to sense creation not as something completed, but as constantly becoming, evolving, ascending. This transports you from a place where there is nothing new to a place where there is nothing old, where everything renews itself, where heaven and earth rejoice as at the moment of creation.¹³⁶

The future is not scripted – within the constraints of natural law, the future is ours to make.

Both quantum mechanics, in stating that the motions of sub-atomic particles are probabilistic rather than determinable from known antecedent conditions, and chaos theory, in demonstrating the unpredictability of future events, provide openings for panentheists and other supporters of indeterminacy.¹³⁷

Our freedom emerges from the structure of the creation as a whole, and as a manifestation of God’s pervasive becoming. God continuously manifests within the system itself, in the ability of the cosmos to organize itself, for pattern to emerge out of chaos, for increasing biological complexity and diversity, for the cumulative aspirations and achievements of human spirit:

What we now see today, in the light of the whole epic of evolution and our understanding of complex systems, is that the very processes of the world are inherently creative of new realities. We therefore conclude that God is creating all the time in and through the complexifying and self-organizing processes to which God is giving continuous existence in divinely created temporal relations (“time”).¹³⁸

God permeates spacetime as a sponsor of free agents and a source of creative energy. This is why the universe is self-creating, why humans demonstrate an artistic spark (manifest in science, art, religion, love, and so on). Jewish tradition affirms the self-creating nature of creation as a gift of God. Rabbi Louis Jacobs discusses that the biblical creation story is not immaculate and *ex nihilo*

¹³⁵ “The Torah and the Holy Blessing One are one” (*Zohar* II 60b).

¹³⁶ Rav Abraham Isaac Kook, *ʿorot haqodesh*.

¹³⁷ Nikkel, “Panentheism,” 642.

¹³⁸ Peacocke, “Complexity, Emergence, and Divine Creativity,” 198.

(which would imply a rupture in natural unfolding and an alien dichotomy between spirit and materiality), but rather tells of the organizing of previous chaos into growing order.¹³⁹ He notes that the Hebrew verb, *bara*, means “cutting out” of pre-existing material. God orders the *tohu vavohu*, the unformed and void, to order itself. That self-creating capacity is then given to the biosphere, as God grants self-creating capacities to each species: *Let the earth sprout vegetation: seed-bearing plants, fruit trees of every kind on earth that bear fruit with the seed in it* (Gen 1:11). Indeed, the paradigmatic divine blessing is self-creativity in freedom: *Be fertile and increase!* (Gen 1:22, 28).

Manifest in self-creating free agents, God cannot not know the future, and does not micromanage our choices. Freedom is built into the universe, even though a constraint on God:

The future is open, not set in concrete, and does not yet exist even for God to know or determine, but God will, uniquely, be present to all futures and will be able to respond to those personal beings who have evolved to have the capacity to respond to God.¹⁴⁰

CONCLUSION

So what do we learn from this old/new way of knowing what we know?

We learn that more than God is being – although God is “Ehyeh, I am,” being – God is becoming, “Ehyeh Asher Ehyeh.” We learn that the promise of eternal becoming is supremely divine. Conceiving God as abstract being (and human beings as abstract being) may well be useful in some regards, but such a focus certainly does not exhaust reality or even highlight how we live our lives. What we are primarily is manifest in dynamism, in relationship. I, in relationship to the Divine, to each other, and to myself, am I. We are, all of us, in a web of continuing change and relationship. We are, all of us, located not in some distilled ideal of being, but in the dynamic unfolding of becoming.

Significant voices in our tradition support this dynamic process and embodied metaphor approach. Indeed, reading the classic Jewish sources through this prism reveals rich depths and colors previously occluded. It is important at this point to recognize that citations from Jewish traditional texts cannot coerce consent, nor would I want them to – they are not raised to impose confor-

139 Louis Jacobs, “Jewish Cosmologies,” in Carmen Blacker and Michael Loewe, eds., *Ancient Cosmologies* (London: Allen and Unwin, 1975) 71. Nahum Sarna affirms the same point: “As ibn Ezra observed, *bara* does not of itself denote the creation of something out of nothing (*creatio ex nihilo*). This doctrine seems to have been first articulated in the late Second Temple work, 2 Maccabees.” *The JPS Torah Commentary: Genesis* (Philadelphia: Jewish Publication Society, 1989) 5.

140 Peacocke, “Complexity, Emergence, and Divine Creativity,” 200.

mity or to compel agreement. Instead, the sources cited here and throughout the paper indicate that there are rich Jewish resources within traditional texts that resonate with this way of understanding the divine, the cosmos, our own humanity, and our place in the world. Aspects of this approach are anticipated in biblical, rabbinic, poetic, and philosophical writings from earlier ages, and this approach can, I affirm, allow those old voices to speak to us anew with greater clarity and efficacy.

This dynamic, embodied approach can unveil that there are both contingent and necessary aspects to God, and both of those can be affirmed within a biblical/rabbinic theology. It means that God both influences the world, and is influenced by the world. That God takes the tears of those who cry and stores them up in a treasure house under the *kisei hakavod*, the Throne of Glory (*b. Šabb.* 105b). What is that assertion if not the world impacting God? God's greatness is not to be found in august indifference, in static unchangeability, in the radical gap between creation and Creator, but rather the analogy I'd like to suggest, articulated first by the theologian Phillip Clayton, is: body is to mind as mind/body is to God.¹⁴¹ We are an expression of God's functioning,¹⁴² and the theory of emergence suggests that a higher level of embeddedness, which we call "God," cannot be explained in terms of the prior levels. But no gap exists separating the highest level from previous levels, *God's Presence (Glory) fills all the earth!* (Isa 6:3). The prior levels all flow, one into the next: *The Holy One is there* (Ezek 48:35). Recall that in emergence what flows from the prior level is inexplicable in terms of the previous layer. So we cannot hope to explain God purely in terms of the cosmos. There is a way in which God can only be explained in God's terms. But there's no gap sundering God from the cosmos; there is emergence. In the words of the prophet Jeremiah:

*Am I only a God near at hand — says the Lord —
And not a God far away?
If a person enters a hiding place,
Do I not see? — says the Lord.
For I fill both heaven and earth — declares the Lord. (Jer 23:23–24)*

That emergence works in the other direction, too. No gap separates God and creation, but we can't fully explain the world in terms of God (hence the naturalism of the scientific methods). And our commitment to complementarity liberates us from the false burden of having to choose one helpful metaphor set over another. We now have access to both, and they can illumine together far

141 Philip Clayton, "Panentheism in Metaphysical and Scientific Perspective," in Clayton and Peacocke, *In Whom We Live*, 83.

142 "Made in God's image," is the Torah's metaphor (Gen 1:26).

more than could have been revealed by either one alone. Judaism, understood panentheistically, affirms that the relationship, although one without gaps, is not completely bidirectional:

Strictly construed this entails that all divine relations are internal relations, that is, relations between God as integrated whole and the creatures as integrated parts. For panentheism then, while the universe is part of God, God and the universe do not form an undifferentiated whole.¹⁴³

The world is, in metaphoric terms, *in* (or *of*) God, but the totality of God is not *in* (or *of*) the world: "God is the place of God's world, but God's world is not God's place" (*Bereshit Rab.* 68:9). The medieval biblical scholar, Rabbi Abraham ibn Ezra, reaffirms that insight when he notes, "God includes everything and is called 'One.'"¹⁴⁴ Panentheistic Judaism recognizes the world as God's *levush*, garment.

Panentheism and embodied conceptual metaphor builds on the insight of Rambam, and ibn Ezra, "God is the knower and the known and the process of knowing."¹⁴⁵ To which ibn Ezra adds, "*zeh hakol*, that is all." God is all at once, because ibn Ezra understands, you don't have to choose one (making the other two false). God is supremely excellent in all categories, and is known through our embodiedness, not despite it. Finding God in our totality, our integration, is nothing less than a cornerstone of rabbinic Judaism: "What short text is there upon which the entire body of Torah hangs? *In all your ways, you will know God* [Prov 3:6]" (*b.Ber.* 63a). And those categories reflect embodied metaphorical reflection and articulation, each one of them, and all of them together.

Perhaps that is what the liturgical phrase, *gedulato ʿein heqer* "your greatness is unsearchable," means: don't constrain Me by your mistaking what is metaphor for literal. Luxuriate in the metaphor and know with every cell of your body. Know from within and without.

The Neoplatonic notion of the material world's emanation from a spiritual Creator, exquisite as poetry and keenly insightful as metaphor, is less helpful as literal description and no theologian has been able to coherently explain how the mechanics of such emanation happened. When a kabbalist claims that God withdrew to make space for something that isn't God, what can that possibly mean if God isn't physical? Or what might it mean when a philosopher "explains" creation as God willing creation, which then emanates from God's will? How did something ephemeral, multiple, and material emerge from something timeless, unified, and spiritual? But a God for whom no ontological gap

143 Nikkel, "Panentheism," 641.

144 Ibn Ezra to Exod 26: 6.

145 Rambam, *Shemonah Perakim*, chap.8 and *Mishneh Torah*, *Yesodei hatorah* 2:10. Ibn Ezra to Exod 34:6.

exists can erupt into materiality without a break (in either logic or becoming):

All the worlds were created through the letters of the Torah, as Scripture tells: *I was God's artisan* (Pr 8:30). This means that God concentrated God's presence in the letters, reducing the intensity of light in accord with that which the worlds would be able to bear. This flow of divine life began with the letter א, the Torah of the highest emanated world. The light in this world was too bright for the lower worlds to receive, however, for this was the brightness of Godself. God therefore went on further, reducing God's light along with the א into the letter ב, the letter with which the Torah opens.¹⁴⁶

A panentheistic Judaism means that God's creation is not a one-time action of substance emanating yet another substance. As Peacocke notes, "Divine 'creation' concerns the *perennial* relations of God to this world. . . . God is not a has-been Creator but always and continuously Creator — *semper Creator*, and the world is a *creatio continua*, as traditional theology has sometimes expressed it."¹⁴⁷ In the words of the *midrash*, "You renew spacetime each day, continuously" (*Midr. Tehillim* 96:1).

And embodied metaphor and panentheism mean that it is no longer illogical for God to reveal in the world, since God is already pervasive. As the Talmud notes, "God's presence is in all places" (*b.Sukkah* 53a). God is the world. So focusing our attention within the world is no longer a philosophical/logical break from contemplating the divine.

*Where can I escape from Your spirit?
Where can I flee from Your presence?
If I ascend to the heaven, You are there;
If I descend to Sheol, You are there too.* (Ps 139:18)

Recognizing that our discussion of God, Torah, good, evil, and religious life are embodied metaphors liberates us to utilize those images which help us to strengthen our sense of the unity of all becoming, our fellowship with all humanity and all creation, our intuitive connection and responsibility to what is beyond us. That profoundly metaphoric sense has deep roots within Jewish faith. The Song of Songs engages in an extended metaphor in which God is the lover and the children of Israel are the beloved. The *Maḥzor* (Prayerbook for the Days of Awe) magnifies this metaphoric play, extending and exulting in the imagery in a magnificent *piyyut* (liturgical poem) from the twelfth century:

¹⁴⁶ Rabbi Menachem Nachum of Chernobyl, *Me'or 'einayim, ḥayyei Sarah*.

¹⁴⁷ Peacocke, "Complexity, Emergence, and Divine Creativity," 198.

We are Your people, and You are our God.
 We are Your children, and You our Parent.
 We are Your servants, and You our Master.
 We are your congregation, and You our only One.
 We are Your heritage, and You our destiny.
 We are Your flock, and You our shepherd.
 We are Your vineyard, and You our guard.
 We are Your creatures and you our Creator.
 We are Your faithful and You our beloved.
 We are Your treasure, and You our protector.
 We are Your subjects and You our Sovereign.¹⁴⁸

The medieval poet and philosopher Yehudah Halevi acknowledges, "All the names of God, save the Tetragrammaton, are predicates and relative attributes, derived from the way His creatures are affected by His decrees and measures."¹⁴⁹ And the medieval sage, Dunash ibn Tamim reminds us, "People are incapable of conceiving God's essence . . . which is why they attribute to God names borrowed from God's most beautiful qualities and actions, such as Creator, Generator, etc."¹⁵⁰ Recognizing our God-talk as embodied metaphor liberates us from the constricting choke of a literalist rationalism, making possible a frank embrace of the pluralism and richness of metaphoric expression.

Panentheism and embodied metaphor mean the commandments are commanded both internally and externally. We can leave that sterile heteronomy/autonomy debate in the dustbin of Kantian Neoplatonism. It's just irrelevant, a bad metaphor. Listen to the words of a prominent Reform rabbi, who clearly understands what this new approach signifies:

The anti-ritual revolution of classic Reform was necessary in its day but it was based on the concept that what constituted our essence was our soul (therefore immortality of the soul and no resurrection of the dead) and that like the Greeks they accepted the body as the source of corruption. Our tradition understands human beings as both body and spirit, and restoration of bodily *mišvot* are in keeping with this holistic approach to human nature.¹⁵¹

The *mišvot*, then, have value precisely *because* of their physicality. As the Talmud notes,

¹⁴⁸ Found in the evening service for Yom Kippur. Translation based on Jules Harlow, *Mahzor for Rosh Hashanah and Yom Kippur* (New York: The Rabbinical Assembly, 1972) 400–401.

¹⁴⁹ Yehudah Halevi, *Kuzari*, 2.

¹⁵⁰ Dunash ibn Tamim, *Commentary to Sefer Yetsirah*.

¹⁵¹ Peter S. Knobel, *CCAR Newsletter* 54:9 (June 2007) 2.

Beloved are the Jewish people, for the Holy Blessing One has surrounded them with *mišvot*: *tefillin* upon their heads and upon their arms, *šišit* upon their garments, and a *mezuzah* upon their doorways. Concerning these *mišvot*, David said: *Seven times a day I have praised you for Your righteous ordinances* [Ps 119:164]. When David entered a bathhouse and saw himself standing unclothed, he said, “Woe to me that I should stand unclothed without a single *mišvah*.” But once he remembered the circumcision upon his flesh, his mind was relieved (*b.Menah. 43b*).

And, finally, panentheism and embodied metaphor mean we don’t have to keep arguing about whose Judaism is right or whose religion is better. Their worth is not a reflection of a correspondence to some “out-there” truth, nor to a literal transcript of God’s will. The worth of a particular variety of religious life is because these clusters of metaphor light up a particular life. It makes the world work for that person and for that person’s community. It provides meaning and purpose. And it inspires acts of compassion, justice, and goodness. That’s enough. That’s as good as it gets. And ultimately it’s all we need. Can I define why Elana is the world’s best wife? I can not and I ultimately do not need to. I love her. And in relating to her I find my fullest self. That’s the standard we apply to any transformative relationship, and the one that I would suggest we start applying to God. That we will find different modes of religiosity is not a threat or a failure – we have already seen how metaphors exult in multiplicity and diversity.

Armed with the insights of embodied metaphor, cognitive science, and the structure of panentheism, we need no longer mistake the dominant philosophical tradition for an objective, necessary understanding of the outside world. We don’t have to accept that dominant literalism on its own terms. But neither do we have to reject it out of hand. Rather we can appreciate it as a brilliant collection of metaphors, sometimes helpful, sometimes not – but valuable when recognized to be metaphoric, and crushing when coerced to be literal truth. We can return to a old/new way, to see God as “both/and,” both beyond the world and thoroughly within it, both the Oneness creating and permeating the world and the Oneness affected by what we do in the world. That same One bids us to enter into relationship to find ourselves, nurture others, pursue justice, and to repair the world:

For when one meditates well on the greatness of the Creator Who Is Blessed – that God is the root and principle of all worlds, that God encompasses and fills all reality, that no thought can grasp God at all, and that all worlds, personalities, and angels are all annihilated and as nothing and emptiness before God – then one’s entirety is awakened to yearn and to be consumed in the flame of sweetness, bliss, and love. Then, one

desires and has a passion to worship God at all times . . . one's heart is inflamed to worship God.¹⁵²

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152 Rabbi Levi Yitshak of Berdichev, *Qedushat Levi*.

טענת „טמאה אני לך“

עמיחי כהן
אוניברסיטת בר-אילן

On the Claim “I am Forbidden to You”

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The last *mishnah* in *Nedarim* deals with a priest's wife who declares that she has been defiled, thus prohibited from remaining married to her husband. The *mishnah* describes the revision that *halakhah* underwent regarding this claim: from a period when the wife's claim was accepted and the husband forced to divorce her, to concluding that the wife's contention should be proven – fearing she preferred another man. The post-talmudic discussions are characterized by linking the issue of “I have become defiled” to the wife's claim, “My husband is repugnant to me” and the husband's claim, “You have become defiled.” A review of the codes and responsa literature reveals many opinions, difficulties, and unanswered questions.

This article endeavors to create a judicial model based on the assumption that the woman's claim, “I have become defiled” is regarded as “self-incrimination.” This model can clarify the *mishnah's* two strata, opinions of different commentaries, the *geonim's* different attitudes, and those of some of the *rishonim* to the claim, “I have become defiled,” in contrast to their view regarding the claim, “My husband is repugnant to me,” and the different attitudes of various adjudicators to the husband's claim, “You have become defiled.”

המשנה החותמת את מסכת נדרים מציגה מספר מקרים בהם חל שינוי בהתייחסותה של מערכת המשפט כלפי אישה הטוענת טענה שיש בה בכדי להעמיד בספק את המשך נישואיה:

בראשונה היו אומרים שלש נשים יוצאות ונטולות כתובה: האומרת „טמאה אני לך“, „שמים ביני לבינך“, „נטולה אני מן היהודים“ חזרו לומר שלא תהא אשה נותנת עיניה באחר ומקלקלת על בעלה, אלא האומרת „טמאה אני לך“ תביא ראיה לדבריה. „השמים ביני לבינך“ יעשו דרך בקשה, ו„נטולה אני מן היהודים“ יפר לחלקו ותהא משמשתו, ותהא נטולה מן היהודים.¹

המקרה הראשון המובא במשנה דן באשת כהן הטוענת שנטמאה לבעלה משום שנאנסה. המקרה השני דן באישה הטוענת שאיננה יכולה להרות בגלל לקות פיזית של בעלה.² המקרה

1 משנה, נדרים, יא, יב.

2 ראה פירוש הרמב"ם, שם: „שהיא טוענת דברים שאי אפשר שידעם אלא יודע הנסחרות, כגון שאמרה שאין בעילתו גמורה ואינו יורה כחן שאי אפשר שתתעבר ממנו כלל, וכלל הוא אצלנו היא, קים לה ביורה כחן הוא לא קים ליה; מפני שהיא יכולה לדעת את זה בהרגשתה בכך, והוא לא יוכל לדעת זאת

בהמשך מפרטת המשנה את השינויים שחלו ביחס לטענת הנשים. במה שנוגע אלינו, אומרת המשנה – „חזרו לומר שלא תהא אשה נותנת עיניה באחר ומקלקלת על בעלה אלא האומרת, טמאה אני לך“ תביא ראיה לדבריה.⁹

מהמשנה עולה לכאורה, שבשלב מסוים כבר לא נחשבה טענת האישה „טמאה אני לך“ – אמינה. כאמור, טענה שכזו יוצרת מצב בו קשר הנישואין שבין הכהן לאשתו הופך לאסור, מכיוון שהכהן אסור באנוסה.¹⁰ חששם של התנאים היה שבכדי לקבל גט וכתובה מבעלה, תטען אשת הכהן טענת „טמאה אני לך“ שקרית. שכמעט בלתי אפשרי להפריכה. גם את קביעתה הסופית של המשנה, שאשת כהן מותרת לבעלה כל זמן שלא הוכיחה את טענתה – ניתן להשליך על דינם של כלל הנשים הנישואות הטוענות ש„נטמאו“ לבעליהם. אמנם יהיה זה פשוט יותר, במישור החברתי, לטעון „נאנסתי“ מאשר „זניתי“ ובנוסף, בשונה מאשת כהן – תאלץ אשת ישראל הטוענת „טמאה אני לך“ להפסיד כתובתה.¹¹ אך למרות הפסד הכתובה וההתייחסות הבלתי נסלחת של החברה למעשה זה, סביר להניח שכשם שחכמי המשנה מצאו מקום לחשוש לטענת – „נאנסתי“ מצד „נשות כהנים“, היה גם מקום לחשוש, באופן יחסי, לטענת „זניתי“ מצידן של כלל „נשות ישראל“ שקצו בנישואיהם, עד כדי שהיו מוכנות לשם כך לטעון טענת שכזו.¹²

ככל הנראה, ריבוי יחסי של טענות מסגנון זה, גרם לשינוי מדיניות הפסיקה. מכאן והלאה – מסכמת המשנה – תהיה חובת ההוכחה מוטלת על האישה. כל זמן שלא הוכחה טענתה כנדרש, אין סיבה לחשוש לכשרות נישואיה. ושוב, כאמור, אין סיבה שלא להחיל את קביעת המשנה גם בנוגע לטענת „טמאה אני לך“ מצד אשת ישראל.

טענת „טמאה אני לך“ מול טענת „מאיס עלי“

השינוי המוצג במשנה ביחס לטענת האישה איננו פשוט כלל.¹³ ה„תיקון“ שנעשה ע”י חכמי המשנה נתפס לכאורה כמבטל ציוריי תורה מפורשים, הן בנוגע לאשת כהן שנאנסה והן בנוגע לאשת ישראל שזנתה. כיצד לוקחים על עצמם חכמי המשנה את האחריות להכריע בצורה כוללת, שאישה הטוענת – „טמאה אני לך“, איננה דוברת אמת ומותר לה ואף מוטל עליה להמשיך ולחיות עם בעלה?¹⁴

9 משנה נדרים, יא, יב.

10 רמב”ם, משנה תורה, אישות, א, ז; יעקב בן אשר, ארבעה תורים ויוסף קארו, שולחן ערוך [טושו”ע] אבן העזר, ו, א.

11 רמב”ם, משנה אורה, אישות, כד, יח; „אמרה לו אשתו שזינת תחתיו ברצונה אין משגיחין בדבריה שמא עיניה נתנה באחר, אבל אבדה כתובתה עיקר וחוספת ואבדה הבליות שהרי הודת בזנות“.

12 בהקשר לכך, לשון חז”ל – „נתנה עיניה באחר“ אף מחזקת את הסבירות לקיומה של תופעה של נשים שהיו מוכנות לטעון – „זניתי“ לא רק מתוך תחושת הריחוק מבעליהן, אלא גם מתוך הדחף של אהבת האחר. בנוגע לשאלה, כיצד מתכוונת האישה לממש את רצונה להינשא לאחר, הרי אסרה עצמה גם עליו, ואם זהותו אינה ידועה, אסרה עצמה על כל העולם? על כך עונה גרונדי (הר”ן) לבבלי, בנדרים, צ ע”ב: „דשמא תלך למקום שאין מכירין בה ובנדרה ותנשא“.

13 לאור מרכזיותם וחשיבותם של דיני המשפחה במשפט העברי, שהרי שייכותו ומעמדו האישי של כל יהודי, נקבעים על פי ייחוסו של אביו ואימו ועל פי מעמדה האישי של אימו. שינויים במעמד האישי של אישה – מהגדרתה כנשואה להגדרתה כלא נשואה, או כמי שהיתה נשואה בהכשר למי שנושאה בחטא – יש בהם בכדי להשפיע על גורל ייחוסם ומעמדם האישי של צאצאיה במסגרת המשפט העברי, על כל המשתמע מכך.

14 ראה למשל רמב”ם, אישות, כד, יח; „אמרה לו אשתו שזינתה תחתיו ברצונה אין משגיחין בדבריה ...

השלישי עוסק באישה הטוענת שנדרה מלהנות את כל היהודים.³ המשותף לשלושת המקרים הוא שבכולם אין אפשרות להפריך או לסתור את טענת האישה ולטעון שהמציאות היא אחרת. במאמר זה ישנו נסיון לבחון את הדגם המשפטי העומד בבסיסו של הראשון מבין מקרים אלו: טענת „טמאה אני לך“ תוך כדי הצגת ובחינת ההיבטים השונים של טענה זו לאורך הדורות.

„טמאה אני לך“

התלמוד דן בפרטי המקרה הראשון:

במאי עסקינן? אילמא באשת ישראל, אי ברצון, כלום יש לה כתובה? ואי באונס, ומי קא מיתסרא על גברא? ואלא באשת כהן, אי ברצון, כלום יש לה כתובה? מי גרעה מאשת ישראל ברצון? אלא לאו באונס, וקתני: יש לה כתובה.⁴

חכמי בבל הניחו שהמשנה לא עוסקת באישה נשואה שזינתה מרצונה, מפני שבכזו – אין היא זכאית לכתובה, בין אם היא נשואה לישראל ובין אם לכהן. כמו-כן, אין לומר שמדובר על אשת ישראל שנאנסה, שהרי לא תהיה אסורה לבעלה. לכן מדובר באשת כהן שנאנסה. זר, אכן, תהיה אסורה על בעלה, אך זכאית לכתובתה.⁵

קביעת המשנה העסיקה רבות את חכמי הדורות. אמנם משנה זו עוסקת במקרה פרטי של אשת כהן שנאנסה, ובזכותה לקבל את כתובתה, אך את קביעת המשנה ניתן להשליך על דינם של כלל הנשים הנשואות הטוענות ש„נטמאו“ לבעליהם, ואכן, כך עשו הפרשנים והפוסקים לאורך הדורות.⁶ דהיינו, כשם שדי היה לאשת כהן בטענת „נאנסתי“ כדי לקבל גט וכתובה, כך יכולה היתה אשת ישראל, לטעון טענת „זינתי“ כדי לקבל גט.⁷ המשנה אמנם עוסקת בטענת אשת כהן, אך ניסוח המשנה – „טמאה אני לך“ – הולם גם את מקרה „אשת כהן שנאנסה“ וגם את מקרה „אשת ישראל שזנתה“.⁸

לפי שאינו מרגיש במה שנפרש מגופו:

3 פירוש הרמב"ם, שם: „שאסרה הנאת עצמה על כל היהודים והיה כולם מודרין הנאה ממנה“ כפועל יוצא מכך, אסרה עצמה אף על בעלה.

4 בבלי, נדרים, צא ע"א.

5 ראה רש"י על בבלי, יבמות, קיב ע"א: „האומרת טמאה אני לך – אשת כהן שאמרה לבעלה נאנסתי דאיתסרא עליה וכתובתה לא מיפסדה“; פירוש המשנה לרמב"ם, נדרים, יא, יב: „וכן הדין אצלנו באשת כהן שנאנסה שהיא נאסרת על בעלה, ואף על פי שהתורה אסרתה עליו חייב בכתובתה מפני שהיא אומרת לו אנא הא קא חזינא את הוא דנסתחפה שדך, נמצא זה שאמר כאן בראשונה היו אומרים האומרת טמאה אני לך נוטלת כתובתה ויוצאת... באשת כהן שאמרה נטמאתי באונס שהיו מאמינים לה ואומרים שאסור לו לבוא עליה ונאסרה עליו וכך פירש התלמוד“ וראה ירושלמי, נדרים, יא, יב: „בראשונה היו או' כו', הא לא הביאה ראייה לדבריה פשיטא שהיא מותרת לביתה א"ר הילא לא מסתברא אם היה חבר יתוש ואם היה כהן שהיא אסורה לוכל בתרומה“ וראה חנוך אלבק, ששה סדרי משנה (ירושלים ותל-אביב: מוסד ביאליק, תש"ב) נדרים, יא, יב, המפרש את המשנה כמסקנת הבבלי. יעקב אפשטיין, מבואות לספרות התנאים (ירושלים ותל-אביב: מאגנס, תשי"ז) עמ' 406–407, מסביר שהירושלמי חולק בהבנת המשנה על הבבלי.

6 אמנם אשת ישראל אינה נאסרת על בעלה עקב בעילת אונס ע"י זר, אך היא תהיה אסורה עליו במקרה בו זינתה ונבעלה מרצונה. ראה רמב"ם, משנה תורה איסורי ביאה, א.

7 אמנם ללא כתובה.

8 ראה יוסף קארו, בית יוסף, אבן העזר, סי' ו, אות יב-יג, ד"ה „אשת כהן“; „ודע שמ"ש אם היא נאמנת לו או העד נאמן לו יוציא כדי לצאת ידי ספק לאו דוקא ככהן דהוא הדין בישראל... וכ"כ הרמב"ם דין זה בפרק כ"ד מהלכות אישות סתם ולא חילק בין כהן לישראל וגם רבינו... כתב כן סתם ולא חילק“

בימי הביניים. בניגוד לקביעה המקובלת על התנאים והאמוראים – „האיש אינו מוציא אלא לרצונו“ קיבלו הגאונים, כבר בראשית תקופתם, את „תקנת המורדת“¹⁷ התקנה העניקה לאישה את הזכות לקבל גט, ללא עיכוב אף ע"י כפיית הבעל, ומבלי לפגוע בזכויותיה הכלכליות.¹⁸ השינוי בתפיסת הראשונים בנוגע לחלותה של התקנה מתחיל להיות מורגש באמצע המאה ה-12, כפי שמסכם זאת אלימלך וסטרייך: „ככל שאנו מתקדמים בזמן, הולכת ונשחקת עילת המורדת המאפשרת לכופ את האיש לתת גט, וככל שאנו נעים מצפון לדרום השחיקה היא מאוחרת יותר“¹⁹ אך עדיין, לאורך כל המאה ה-13 וה-14 מקבלים בתי הדין בקהילות רבות תחת אזור השפעה מוסלמי, את טענת „מאס עלי“ כקבילה לכפיית

אותו לגרש וזה דעת הר"ם מרוטנבורק ז"ל וכתבו הרא"ש ז"ל בפסקיו. אבל היה מחרים על מי שלמדה ונתן לה עצה למרוד על בעלה כדי להוציא הנדוניא מידו וכשהיה רואה ערמה בדבר היה מצוה להחזיר הנדוניא הלכך לא היה דין דין „מאס עלי“ אלא כשתתן אמתלא לדבריה למה אינו מקובל אצלה אם מפני שהוא הולך בדרך לא טוב או מפני שמכלה ממנה ודומה לזה. הדעת השביעי שסובר גם שאע"פ שאין הדין נותן לכופ לגרש אם יש אמתלא כופין אלא שמצריך שתהיה האמתלא גלויה ומפורסמת וידועה לעין כל שבזה תו ליכא חשדא דשמא עיניה נתנה באחר... וזה דעת התוספות ז"ל וכן כתב ג"כ הר"ם מרוטנבורק ז"ל בשמם בתשובה: עוד בעניין זה ראה גרוסמן, חסידות ומורדות, עמ' 427 ואילך; ירחמיאל ברודי, „כלום היו הגאונים מחוקקים?“ שנתון המשפט העברי יא-יב (תשמ"ד-תשמ"ו) עמ' 290 ואילך; משה שפירא, „גירושין בגין מאסה“ דיני ישראל ב (תשל"א) עמ' 117-153.

ראה אלימלך וסטרייך, „עלייתה ושחיקתה של עילת המורדת“ שנתון המשפט העברי כא (תשנ"ח-תש"ס) עמ' 123-147; זרח ורהפטיג, „כפיית גט להלכה ולמעשה“ שנתון המשפט העברי ג-ד (תשל"ו-תשל"ז) עמ' 154-216. יש לציין לא-הוראות וחילוקי דעות מסוימים בהקשר לשיטות הראשונים בעניין הכפייה, וזאת על רקע אי-הודאות סביב המינוחים חובה, כפייה ומצווה. ראה למשל בשיטה מקובצת, כתובות, סד עמוד א, ד"ה וכתב רבינו יונה: „דאע"ג דאין כופין לתת גט באומרת מאס עלי, היינו כפייה בשוטים, אבל ב"ד מודיעים לו שמצוה עליו לגרש ונותנין לו עצה שיגרשנה, ואם לא יגרשנה, מצוה למקרייה עבריינא...“ על ההבדל, הלכה למעשה, בין „כפיית גט“, „חיוב לגט“, „מצווה לגרש“ ו„ראוי לגרש“, ראה מנחם אלון, מעמד האישה (תל-אביב: הקיבוץ המאוחד, תשס"ה) עמ' 300-301. מקורו של הביטוי „מאס עלי“ בתלמוד הבבלי, כתובות, סג ע"ב. וראה למשל שו"ת הר"ד (ירושלים, מכון התלמוד הישראלי השלם, תשכ"ז), סי' כב, ד"ה „וני"ל ואת הערת המהדיר, שם.

17 יבמות, קיב ע"ב. מקובל לייחס את תקנת המורדת לגאונים, אע"פ שייחוס זה כוללני מאד ואינו מדויק (ראה איגרת רב שירא נאון, מהדורת לוי, עמ' 101; תשובות הגאונים, שערי צדק, נו ע"א, סי' טו, ברודי, „כלום היו הגאונים מחוקקים?“; וסטרייך, „עלייתה ושחיקתה של עילת המורדת“ עמ' 123-147; זרח ורהפטיג, „כפיית גט להלכה ולמעשה“ שנתון המשפט העברי ג-ד (תשל"ו-תשל"ז) עמ' 187. מנחם אלון, המשפט העברי, תולדותיו, מקורותיו, עקרונותיו (ירושלים: מאגנס, תשנ"ב) עמ' 541-546, עמד על השינויים וההתפתחות ביחס למורדת, שאת שורשיהם ניתן לזהות כבר בתלמוד הבבלי, ועל ההבחנה בין הוראת בית הדין לבעל, לתת גט לאשתו, לבין כפיית ב"ד את הבעל בעניין זה. אלימלך וסטרייך דן בהרחבה בשאלת מקורה ומהותה של התקנה, והעלה את האפשרות שאף הגאונים וחלק מהראשונים ראו תקנה זו, על היכס הכפייה שבה – כבעלת תוקף תלמודי. לדבריו, מרכיב התקנה שנוצר ע"י הגאונים נוגע בעיקר לתחום התוצאות הממוניות שיש למרידת האישה וזכויותיה הכלכליות ולא בתחום מעמד הנישואים עצמו. ראה על כך בספרו, תמורות במעמד האישה במשפט העברי, עמ' 34-40; כאמור, רווחת יותר התפיסה שמרכיב הכפייה בתקנה מיוחס לגאונים, ועל כן דן יוסף קארו (בית יוסף, אה"ע, סי' עז) בשאלה: כיצד תיקנו הגאונים בניגוד לדעת האמוראים? הוא מזכיר את תשובת הרא"ש שהגאונים סמכו בעניין זה על הכלל – „כל המקדש אדעתא דרבנן מקדש“ וראה אליעזר יהודה ולדנברג, שו"ת ציץ אליעזר (כב חלקים; ירושלים: מוסד הרב קוק, תש"ה-תשמ"ח) ח"א, סי' כ"ו-כ"ז.

18 על המניעים האפשריים לתקנה מרחיקת לכת זו, ראה אלון, המשפט העברי, עמ' 541 ואילך; גרוסמן, חסידות ומורדות, עמ' 434-435; וסטרייך, תמורות במעמד האישה במשפט העברי, עמ' 70 ואילך.

19 וסטרייך, „עלייתה ושחיקתה של עילת המורדת“ עמ' 145.

יותר מכך. קביעתה הסופית של המשנה, שנפסקה להלכה, אינה עולה בקנה אחד עם הרקע ההיסטורי הנוגע ליכולתה המעשית של האישה, בתקופת הגאונים והראשונים, לפרק את נישואיה. וביתר הרחבה:

בחינה מדוקדקת של העילות לגירושין, הנזכרות בספרות ההלכה, מצביעה על מספר עילות שניתן לכוונתן כעילות סובייקטיביות. אמנם תביעה לגירושין מכח עקרות, מעדרות ממושכת מן הבית או המרת דת – נחשבות כעילות אובייקטיביות. אך טענת עקרות (אינו יורה כחץ) או מאיסה בבעל, נחשבות כעילות סובייקטיביות.¹⁵ מסתבר שכבר החל מתקופת הגאונים ועד לפחות סוף המאה ה-14, נהגו בקהילות רבות לכפות על הבעל נתינת גט, גם על רקע תקנת ה"מורדת" וטענת "מאיס עלי" שנקשרה בדיוני הפוסקים לתקנת ה"מורדת".¹⁶

לטענת אברהם גרוסמן, "מרידת" האישה היא גורם הגירושין השכיח והמשמעותי ביותר

ואין בית דין כופין את האיש לגרש את אשתו בדבר מדברים אלו עד שיבואו שני עדים ויעידו שזינתה אשתו זאת בפניהם ברצונה ואחר כך כופין אותו להוציא".

15 על עילות אלו והמקורות השונים לכך בהלכה ראה אברהם גרוסמן, חסידות ומורדות – נשים יהודיות באירופה בימי הביניים (ירושלים: מרכז זלמן שזר, תשס"א) עמ' 413 ואילך. טענת "אינו יורה כחץ" היא הטענה השניה המוזכרת במשנה (נדרים, יא, יב) המשמשת כבסיס לדיון במאמר זה.

16 ראה למשל שו"ת הר"ן, סי' יג; אשר בן יחיאל, שו"ת הרא"ש, כלל מג, סי' יב; מקורן של הלכות ה"מורדת" – המוגדרת בהלכה כמי שמסרבת לקיים יחסי אישות עם בעלה – במשנה, כתובות, ה, ז; שם, ז, א-ה; בבלי, כתובות, סג-סד. דין מורדת נידון בהרחבה ברמב"ם, אישות, יד, ובטוש"ע, אה"ע, סי' עז, ובנושאי כלים, שם. ספרות הפסיקה והתשובות משקפת חילוקי דעות רבים בנוגע לדיון זה. עובדה זו נובעת, ככל הנראה, מחילוקי הדעות הבסיסיים של הראשונים בנוגע לדברי הגמרא עצמה, עליהם התווסף חוסר וודאות של אחרוני הראשונים בנוגע לשיטות הראשונים עצמם. ראה אלימלך וסטרין, תמורות במעמד האישה במשפט העברי: מסע בין חסרונות (ירושלים: מאגנס, תשס"ב) עמ' 35-41. כמו כן, מרכזיות דיון המורדת, על היבטיו השונים, בהווי החיים היהודי לאורך הדורות, גרם לכמות רבה של דיונים ופולמוס. את השיטות השונות הנוגעות לדיון, "מורדת" הטוענת "מאיס עלי" הטיב לסכם (מבלי להתייחס לסדר הכרונולוגי בשיטות ועל המשתמע מכך) בעל שו"ת התשב"ץ, ד, טור ג ("חוט המשולש"), סי' לה: "ובזה צריך להאריך קצת בכל חילוקי דעת הפוסקים ז"ל בדיני מורדת כדי לברר הדין בנדון זה וראיתי שמחלוקת הפוסקים זכרונם לברכה בזה לשבעה דעות. הדעת הראשון הוא מי שסובר דבין במורדת האומרת בעי' לי' ומצערנא ליה בין באומרת מאיס עלי... וישאר הדבר ברשות הבעל רצה לגרש יגרש רצה לקיים יקיים... הדעת השני סוברים... באומרת בעינא ליה ומצערנא ליה דאז משהין אותם י"ב חדש ולאחר י"ב חדש כופין אותו לגרש אבל אם אמרה מאיס עלי כופין אותו לאלתר לגרש ושזה הוא כפי הדין ולא משום תקנה וזה דעת הרמב"ם... וכן דעת רש"י ז"ל ורבי' גרשום מאור הגולה ור"י ורשב"ם והראב"ד והסמ"ג וכמה מחכמי ישראל נמשכו אחריהם. הדעת השלישי סוברים הפך מזה לגמרי ואומרים דמן הדין אין לכופ' על הגירושין בשום אופן שאין אדם מגרש אלא לרצונו וכל הכופה לגרש על ידי שום טענה בעולם או מאיוזה טעם שיהיה ה"ז מרבה ממזרים בישראל... וזה דעת ר"ת ז"ל והסכימו לדעתו הרמב"ן והרשב"א והרא"ש והר"ן זצ"ל והנמשכים אחריהם... הדעת הרביעי דעת הסוברים שאע"פ שמן הדין אין כופין לגרש מ"מ משום חששא דשמא תצא לתרבות רעה כופין את הבעל לגרש וזה דעת הגאונים ז"ל והוא דינא דמתיבתא... וכ"כ הר"ף ז"ל תקנה זו ואמר שכך נוהגים מכמה שנים ונראה שהוא ז"ל מסכים בזה... וכן כתב רב שרירא גאון ז"ל שנותנין לה גיטא לאלתר פן תצאנה נשים לתרבות רעה כתקנת הגאונים ז"ל וכן כתב בנו רבינו האי גאון ז"ל וז"ל אע"פ שמדין ההלכה אין לכופ' את הבעל לגרש מ"מ גאוני הישיבות של ככל תקנו שכופין ליתן גט מיד ויותר משלש מאות שנה היה בימיהם משנעשית תקנה זו והובאו דבריו בהגהות. הדעת החמישי הוא הפך מדעת זה שאע"פ שמן הדין כופין אותו ליתן גט הנה ראוי לתקן שלא לכופ' אותו לגרש משום פריצות וקלקול הדור שמא נתנה עיניה באחר... וזה דעת הרא"ש ז"ל... הדעת הששי שאע"פ שאין כופין האיש לגרש אפי' באומרת מאיס עלי משום דחיישינן שמא נתנה עיניה באחר מ"מ אם נתנה אמתלא לדבריה כופין

ראכן, אין זה פלא שר"ת ואחריו הרא"ש התנגדו בתקיפות רבה לקבלת טענת „מאס עלי“ כסיבה מספקת לקבלת גט.²⁵ אחת מטענותיהם המרכזיות לשלילת חלות תקנת מורדת על בסיס טענת „מאס“ היא – „כי בעונותינו בנות ישראל הן פרוצות בזמן הזה, ואיכא למיחש שמא נתנה עיניה באחר.“²⁶ הרי שבמובן מסוים, טענת ר"ת והרא"ש המתנגדים בתוקף לכפיית הבעל לתת גט, מחדדת את השניות ואי-ההתאמה שבין שתי ההלכות: האם פריצות בנות ישראל מהווה עילה לכפיית גט או דווקא לסירוב לכך?

בספרות הפסיקה והתשובות, ניתן למצוא מספר נסיונות ליישב בין המגמות הסותרות שבטענת „מאס עלי“ ודין „מורדת“ כפי שהתגבשה ונהגה למעשה מתקופת הגאונים, במשך למעלה מחמש מאות שנה, לבין טענת „טמאה אני לך“ על השלכותיה המעשיות. אך ניכר שמגוון השיטות והדעות סביב מהותה, היקפה וחלותה של תקנת המורדת, ובמקביל – מספר

ביקורתם הקשה של ר"ת ואחריו הרא"ש) לצמצם מאד את חלותה של תקנת המורדת. במסגרת צמצום זה ניסו הדיינים לוודא שטענת „מאס עלי“ איננה נובעת ממצב בו נתנה האישה עיניה באחר. וראה למשל שמעון בן צמח, שו"ת תשב"ץ (ירושלים: מכון שלמה אומן, מכון אור המזרח, מכון ירושלים, תשנ"ח) ד, טור ג (חוט המשולש), סי' לה, ד"ה „וזה נודע“, „הרי נתבאר מכל זה דבנדון זה דליכא חששא דשמא נתנה עיניה באחר שהאמתלא נגלית לעין כל איפשר שלא ימצא שום חולק בזה וכ"ע ירדו שכופין אותו לאלתר לגרש“, עובדיה יוסף, שו"ת יביע אומר (ירושלים: חסר מוציא לאור, תשי"ד) ג (אה"ע), סי' יח, ד"ה „ד. ותבט“, „כשהאמתלא ברורה ומפורסמת שעכ"פ ע"פ הרוב דבריה אמתיים, שפיר אזלינן בתר רובא לכופו להוציא“

25 ראה תוספות על בבלי, כתובות, סד ע"א, ד"ה „אבל אמרה“, רבינו תם, ספר הישר, תשובות (ירושלים: חסר מוציא לאור, הפצת ספריית האחים גיטלר, תל-אביב, תשמ"ח) סי' כד, ד"ה „מקול מחצצים“, „חלילה לרבנו להרבות ממזרים בישראל...“; ספר הישר (חידושים), סי' ד; „כי כמה פעמים יצתה מלפנינו הוראה בטעות על ההיא דאמרי כפר אעפ"י אבל אי אמרה, מאס עלי לא כייפי' לה. והיינו מפרשים על כל הנשים האומרות לבעליהן, מאס עלי; והיה קשה לי הא דאמרי, השמים בני ובינך יעשו דרך בקשה דלמא נתנה עיניה באחר... ולשון כפיין לה (הטעו) [הטעה] רבותי' להעמיד השמועה ככל הנשים אפי' אינן מורדות מה שלא היה ומה שלא נברא. אבל כל דבר שאין רצונה מיקרי כפייה שמכריזין עליה ומפסידין כתובתה ומעניגין אותה. ותו לא מידע וראה גם אברהם סופר (שריבר), עורך, תשובות חכמי פרובניצה (ירושלים: דפוס עקיבא יוסף, תשכ"ז) סי' עב, ד"ה „על מעשה“, „ומעקר הדין אני דן לפני רבינו שאי אפשר לומר כן שכופין אותו להוציא כשאומרת טענת, מאס עלי; דאם כן לא הנחנו בן לאברהם אבי יושבת אשתו תחתיו אלא כשכועסת עמו מורדת מתשמיש ואומרת מאס עלי שיודעת שסופה להתגרש ויוצאה, ושנינו (בבלי, נדרים צ, ב) על האומרת, מאס, טמאה אני לך; דמשויא נפשה חצופא בהאי טענה, דלא מהימנא אלא תביא ראייה לדבריה... לפי שחוששין שמא עיניה נתנה באחר ורוצה להתקלקל... כ"ש זאת כשאומרת, מאס עלי... שמעק טענה יש הוכחה גמורה שענינה נתנה באחר, וכל הנותנות עיניהן באחרים נמצאו לפי זה תולות עצמן בטענה זו ויוצאות, וכשזוהי על כל הצדדין לא מצאתי דבר נראה מפליג בין זו לההיא דהתם, אלא דבר אחד שמעתי אותו מפי אבא מרי ז"ל כמה פעמים כשהיינו נושאים ונותנים על דעת הר"מ ז"ל והוא, שאנו חוששין בהם חששא זו דשמא עיניה נתנה באחר הוא בשאין קוראות תחלה ערער על הבעל וטוענות תחלה מאליהן אלו הטענות, אבל זאת הבעל קורא חמס עליה ומתחיל הטענה והיא כל עצמה אינה מערערת עליו אלא שותקת ונמנעת מלשמש אותו, וכשבאנו לשאול את פיה היא שאומרת אחת מאלו הטענות או, מאס עלי או כעינא ליה ומצערנא ליה, ואיכא למימ' בהא דליכא למימר דשמא עיניה נתנה באחר, ועם כל זה לא קבעה אבא מרי נ"ע, דבכל מקום יודעת שסוף זה האיש להתרעם עליה וסופה לומר כך ולחבוע גרושין וחזרה החששא על עקרה; שו"ת הרא"ש, כלל מג, סי' ו; „תשובה: אע"פ שרבינו משה ז"ל כתב, דכי אמרה: מאס עלי; שכופין אותו להוציא, ר"ת ור"י ז"ל חולקין עליו; וכיון דאיכא פלוגתא דרבנותא, למה נכניס ראשו בין הרים גדולים, ולעשות גט מעושה שלא כדין, ולהתיר אשת איש? ועוד, כי בעונותינו בנות ישראל הן פרוצות בזמן הזה, ואיכא למיחש שמא נתנה עיניה באחר, וכל המעשה בטענה זו, מרבה ממזרים בישראל“

26 שו"ת הרא"ש, כלל מג, סי' ו.

גט. כך למשל, בסופה של המאה ה-14, "הריב"ש והתשב"ץ, בבואם לצפון אפריקה מצאו קהילות מקומיות היושבות בסביבה מוסלמית מובהקת במשך מאות בשנים, ולהם מסורת מקומית העושה שימוש הלכה למעשה בעילת המורדת".²⁰

במה שנוגע לדיון כאן, יש לברר מדוע – אם זהו מצב הדברים מראשית תקופת הגאונים ועד אמצע תקופת הראשונים – לא היה מקום להאמין לאישה הטוענת, "טמאה אני לך"? הרי אם נתנה עיניה באחר, היתה יכולה לטעון – "מאיס עליך" הקרובה אף יותר לאמת מבחינות מסוימות, ולקבל את גיטה.²¹ ואם בכל זאת טוענת האישה שלפנינו – "טמאה אני לך" מדוע שלא נאמין לטענתה?²²

יותר מכך: לאור העובדה שחכמי ישראל לא הסתירו את הסיבה לקבלת תביעתה של ה"מורדת" לגט: "וראיהו יחיב גיטא לאלתר כדי שלא תצאן בנות ישראל לתרבות רעה, וכן עמא דבר"²³ – נראה לכאורה שסיבת אי-נתינת הגט לאישה הטוענת, "טמאה אני לך" – "שמא נתנה עיניה באחר" משמשת סיבה לנתינת גט במקרה של טענת "מאיס עליך" לכאורה, יש לדייני תקופת הגאונים וחלקה של תקופת הראשונים הערכה ברורה בנוגע למצוקתה של האישה ולמידת מוכנותה, "לחצות את הקורים" לאחר שנתנה עיניה באחר. אך עדיין תמוהה העובדה שבמקרה אחד, אין להאמין לה מפני ש"נתנה עיניה באחר" ולכן לא נפטור אותה בגט, מתוך הנחה שהיא אכן תוותר על שאיפתה לחופש. ובמקרה אחר, יש לצאת מנקודת הנחה שדווקא בגלל ש"נתנה עיניה באחר" יש לפטור אותה בגט, לפני שתנקוט בצעד נואש שיגרום לה לחצות קורים הלכתיים ברורים כגון זנות, או המרת דת.²⁴

20 וסרטייך, "עלייתה ושחיקתה של עילת המורדת" עמ' 143; וראה עמ' 145: "ברור לגמרי שהולדתה של הלכה זו או לפחות התעצמותה הרבה קשורה באופן הדוק בנסיבות הזמן והמקום – ראשית הכיבוש המוסלמי של בבל במחצית השנייה של המאה השביעית. מקורות ההלכה מציגים בפירוש, כי היא נועדה למנוע שימוש לרעה במסודות השיפוט המוסלמיים אשר כפו גברים יהודים לתת גט בנסיבות אלה שהאשה תובעת גירושין בטענת מאיס עליך".

21 וסרטייך, תמורות במעמד האישה במשפט העברי, עמ' 40, מתאר את הפשטות והמהירות היחסית שבתהליך כפיית הגט על הבעל מצד מורדת בתקופה הנדונה כאן: "הלכת המורדת כפי שהצגנוה כאן נתנה בידי האישה כלי משפטי רב עצמה שבאמצעותו היא יכלה להשתחרר לפי רצונה בלבד מקשר הנישואין, מבלי שתהיה תחת ידה עילה משפטית מוכרת לפי הדין התלמודי. שיטת גירושין זו קרובה לשיטת הגירושין הרווחת היום במדינות המערב המכונה no fault לאמור, "גירושין ללא אשמה".

22 מספר אחרונים (ראה למשל אריה לייב הלר, אבני מילואים [ניו-יורק: בית דפוס בלתי נודע, תשכ"ו]. תל-אביב, אברהם עיוני, תשי"ז), הלכות כתובות, סי עז, אות ז, ד"ה, "אמנם"; אפרים זלמן מרגליות, בית אפרים [לעמבערג, צקע"ח], הלכות חליצה, סי קמב, ד"ה, "והנה"; יצחק בן משה נויס-בילמונטי, שער המלך [לכוב, תרע"ט, טו, ד"ה, "האמנם"; יהונתן אייבשיץ, בני אהובה [פראג, תקע"ט] אישות, כד, יח) נסחו שאלה זו בדרך של תמיהה, מדוע לא נאמנת האישה הטוענת, "טמאה אני לך" מכח טענת "מיגור" דהיינו: מדוע לא להאמין לאישה הטוענת טענה חלשה יחסית, מכח העובדה שהיא באפשרותה לטעון טענה חזקה יותר או מועילה יותר על פניו? חסרונה של טענת, "טמאה אני לך" על פני "מאיס עליך" הוא ככך שיש בטענה זו משום פגיעה קשה בכבודה של האישה הטוענת שזוהי (אשת ישראל) וגם לאור העובדה שטענת, "מאיס עליך" משאירה לה, לפחות לשיטת מספר ראשונים, את הזכות לקבלת כתובתה או בלאותיה.

23 תשובות רג"ח, מהדורת שלמה אידלברג [ניו-יורק: ישיבה אוניברסיטה, תשט"ז] סי' מ-מב. וראה אשר בן יחיאל (הרא"ש) על בבלי, כתובות, פ"ה, אות לה.

24 וראה למשל בולדנברג, שו"ת צ"ץ אליעזר, ח"ד, סי' כא, המסכם את השיטות השונות בדין מורדת על בסיס טענת, "מאיס": "מכל האמור יש כר נרחב לדון בדבר כפיה לגרש במקום שישנו בטענת המאיס עלי אמתלא מבוררת, ובית הדין רואה צורך השעה לכופ את הבעל לגרש כדי שלא תצא האשה לתרבות רעה" וראה שפירא, "גירושין בגין מאיסה" עמ' 130-146. כאמור, מהמאה ה-13 ניכרת מגמה (בעקבות

מושפעת ממידת הנאמנות אותה מעניקים בית הדין לאותו אדם.³² כשם שקרוב פסול לעדות, ובכלל זה גם משה ואהרן, כך אין אדם מעיד על עצמו עדות שהיא בגדר הפללה עצמית.³³ אהרן קירשנבאום מונה את מעלותיה של אי-קבילות ההפללה העצמית וניתן לסכם דבריו בקצרה:³⁴

1. הכלל של אי-קבילות הודאה פלילית אמור לספק לנאשם משפט זהיר ויסודי.

2. שלילת תוקפה המשפטי של ההרשעה העצמית מחזקת את עקרונותיהם של סדר דין ומתן עדות תקינים.

3. שלילת ההרשעה העצמית משמשת תריס כנגד אמצעי כפייה גסים ועינויי אדם, במסגרת הנסיון לעמוד על האמת.

אך כמו במקרים רבים אחרים בתחום המשפט, בהם מצבים או נסיבות מסוימות מחלישות ואף מבטלות את תקפותה וכוחה של השיטה הכוללת, כך גם בנוגע לכלל „אין אדם משים עצמו רשע“ – יש לציין מספר גורמים העלולים להוות סיבה לצמצומו או ביטולו של כלל זה:³⁵

1. דברים הנאמרים לשם שמים. כגון הודאה שנאמרה על רקע הרצון לחזרה בתשובה.³⁶ במסגרת זו ניתן לכלול גם הודאות שמטרתם היא לא רק להתוודות ולנסות לתקן את העבר, אלא גם כאלו שמטרתם היא למנוע נזק עתידי אישי או, לחילופין, ציבורי. יש

נטרפה דעתו של המודה... ואולי הוא רוצה להתאכזר... בהקשר לכך מעיר קירשנבאום שישנם מניעים רבים נוספים המביאים לידי הודאה באשמה שקרית... יאוש באשר לזיכוי... רצון לחפות על חביו... גם את תפיסת הרב"ז מתאר קירשנבאום (עמ' 179): „יכול אדם לחרוץ בהצהרת פיו את גורלם של דברים שהם בשליטתו, כגון ממונו, ולכן „הודאת בעל דין כמאה עדים“ אבל הואיל וחיייו אינם בשליטתו, אלא בשליטת בוראו, אין הודאתו הפלילית אשר בגינה היה מאבד את חייו מתקבלת“ מדברי שלמה לוריא (המהרש"ל) וצבי הירש אשכנזי (החכם צבי) מבין קירשנבאום שחזקת כשרותו של כל איש בישראל כוחה כה גדול עד שאין בהודאת פיו כדי להכריע נגדה“ בסופו של דבר מדיש קירשנבאום את אופיה ה„לא רציונלי בהכרח“ של אי-קבילות ההרשעה העצמית הפלילית (עמ' 178): „ההשערה, שמא נטרפה דעתו“ דומה לכל נסיון לתת, טעמא דקרא' דהיינו היא מקרבת את ההלכה אל השכל האנושי אבל אינה מתיימרת למצות את כל הכלול באותה הלכה... הרמב"ם... מדיש את דעתו שהסבר שנתן אין בו כדי למצות את הנימוק או את הנימוקים העומדים מאחורי הלכה זאת. אדרבה, רמז ברור רומז לנו הרמב"ם כי הלכה זו היא למעלה מהבנתנו“

32 יש לציין שהעובדה שבעל הטענה במקרה הנדון כאן – היא אישה, איננה רלוונטית לעניין הנדון כאן, וראה דברי קירשנבאום (הרשעה עצמית במשפט העברי, עמ' 274): „אמנם אישה פסולה לעדות, אבל: א. היא נאמנת כעד אחד הנאמן באיסורים. ב. כאשר היא בעל דין חלות עליה כל הלכות שבועה. גם אישה, באותם המקומות שיש לה נאמנות הלכתית, אינה יכולה להרשיע עצמה“ וראה ר"ן, מאיר, וקחלת יעקב על בבלי, כתובות, עב ע"א.

33 לטענת אהרן קירשנבאום, אין להתעלם ממורל אפשרי נוסף העומד בבסיס הכלל „אין אדם משים עצמו רשע“ מורל זה, אותו מייצג הרשב"ש, רואה באי-קבילותה של ההודאה העצמית, ביטוי להסתייגות נקודתית חלקית מנאמנותו של האדם המפליל עצמו. כך שבאופן תיאורטי, אם היה בית דין משוכנע בצדקת טענתו של המודה – היה מקבלה. יש לציין שמודל זה אינו מקובל על רוב הפוסקים. ראה קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 173–174.

34 קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 196.

35 וראה על כך בהרחבה אצל קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 290 ואילך.

36 תוספות על בבלי, בבא מציעא, ג, ע"ב, ד"ה „מה אם“, וראה נאמן לומר מזיד הייתי הא אין אדם משים עצמו רשע... וי"ל דאין נאמן לפסול עצמו אבל הכא עושה תשובה ואינו רוצה להביא חולין לעזרה“

השיטות להסבר התהליך המתואר במשנה העוסקת בטענת „טמאה אני לך” – כל אלו הקשו מאד על מציאת פתרון מקיף וכולל לפשר יחסי הגומלין הבעייתיים שבין שתי הסוגיות.²⁷ ייתכן שהעמדת מודל משפטי מבוסס, שיהיה מסוגל להבהיר את פשרה של המשנה העוסקת בטענת „טמאה אני לך” יכול לשמש יסוד להבנת החילוק המהותי שבין הסוגיות הנידונות כאן ואף לשמש רקע הולם למגמתו העיקרית של מאמר זה: בחינת ההיבטים השונים של טענת „טמאה אני לך” במהלך הדורות.

לשם העמדת מודל משפטי מבוסס למשנה, יש להדגיש, ראשית לכל, את המחסום המשפטי המרכזי העומד בפני האישה הטוענת טענה העלולה לפגוע במעמדה האישי: כגמרא מנוסח כלל זה בקביעה – „אין אדם משים עצמו רשע”²⁸ משמעות הדברים היא שמכיוון ש„אדם קרוב אצל עצמו” אין הודאתו קבילה בבית הדין.²⁹ בתחום דיני הממונות, יחול הכלל „הודאת בעל דין כמאה עדים”³⁰ לשיטת רובם המכריע של הפוסקים, בבסיס הכלל „אין אדם משים עצמו רשע” עומד מודל משפטי הרואה בהפללה העצמית הודאה שאיננה קבילה, באופן מוחלט ודוגמטי.³¹ שלילת ההפללה העצמית איננה אמורה להיות

27 רובו של הדין בעניין זה, מרוכז סביב הלכות הרמב”ם, אישות, פרק יד, הדין המורד ושם. פרק כד, הדין בטענת „טמאה אני לך”.

28 הפללה עצמית היא עדות או העלאת טענה שיש בתוכנה גילוי המפליל את הטוען או את מוסר העדות עצמו. ראה בבבלי, סנהדרין, ט ע”ב. שו”ע, חושן משפט, סי’ לד, כה: „אין אדם נפסל בעבירה ע”פ עצמו, אלא על פי עדים שיעידו עליו, שאין אדם משים עצמו רשע”; רמב”ם, עדות, יב, ב: „אין אדם נפסל בעבירה על פי עצמו, כיצד הרי שבא לכית דין ואמר שגנב או גזל או הלוה בריבית, אע”פ שמשלם על פי עצמו אינו נפסל, וכן אם אמר שאכל נכילה או בעל אסורה אינו נפסל עד שיהיו שם שני עדים שאין אדם משים את עצמו רשע” את אופיה של אי-קבילות ההפללה העצמית מתאר קירשנבאום, הרשעה עצמית במשפט העברי (ירושלים: מאגנס, תשס”ה) עמ’ 88–89: „אין אדם משים עצמו רשע; בין אם הוא מודה באשמה שלמה ובין אם הוא מודה באשמה חלקית, הודאתו נדחית, ולא לעדות תיחשב. זאת אומרת... חל על בית הדין איסור לקבל דברים שהוא אומר לרעת עצמו... ההאשמה חייבת להתאמת בעדויות אובייקטיביות, דהיינו עדויות שאינן תלויות בנאשם ומתבססות על מקורות המנותקים ממנו... עקרון זה תופס במשפטים פליליים (דיני נפשות ומלקות), בעברות דתיות (במובן הצר) ובדיני קנסות (כפי שעוד נראה, הוא אינו תופס בדיני ממונות).”

29 ראה קירשנבאום, הרשעה עצמית במשפט העברי, עמ’ 135: „שלילת ההודאה הפלילית, „פיו” נלמדה מהכתוב „לענות בו סרה” (דב’ יט, טז) או מ”לא יענה לנפש למות” (במ’ לד, ל). שני פסוקים אלה שימשו בסיסים לפרשנות שממנו נגזרו שני עקרונות דוגמטיים: 1. אין מרשיעים אדם אלא על פי שני עדים... אם כן... רק עדותם של שני עדים קבילה – להוציא את ההודאה הפלילית, אך עקרונית ייתכן ותתקבל הודאתו כעדות בצירוף עד נוסף. 2. קרובו של אדם פסול לעדות הן בדיני נפשות הן בדיני ממונות. הן לטובתו הן לרעתו. הגמרא עצמה מדגישה את טיבה הלא רציונלי של ההלכה הזאת בצורתה הגורפת (שאין היא מבוססת על החשד שמא ישקר כל עד בעניין קרובו), שהלוא היא חלה אפילו על משה ואהרן, צדיקי הדור... וכי יש לך קרוב לאדם יותר ממנו עצמו? ואם קרוב פסול לעדות, קל וחומר יהא האדם עצמו פסול לעדות במשפטו הוא... הרי על פיו אי-אפשר לקבל את ההודאה של הנאשם אפילו כעדות של עד אחד שהייתה ראויה להצטרף לעדות של עד שני כדי לקיים את ההלכה של שני עדים”

30 בעניין מקורו הרעיוני של הכלל „אין אדם משים עצמו רשע” ראה קירשנבאום, הרשעה עצמית במשפט העברי, עמ’ 158 ואילך; עמ’ 340 ואילך.

31 ראה סיכומו של קירשנבאום, הרשעה עצמית במשפט העברי, עמ’ 164 ואילך: „הרי” מיגאש... מדמה את האדם המודה הודאה פלילית על עברה בת עונשין לאדם הנודר נדר של צער... הודאה פלילית, הואיל והאפקטיביות שלה תלויה בבית הדין ובית הדין לא ייתן יד לסייע לאדם לעבור על דברי תורה, הרי שאינה חלה, אינה תקפה ואינה קבילה – אפילו בדיעבד” בנוגע לרמב”ם כותב קירשנבאום (עמ’ 166): „שנים הם הנימוקים לאי-אמינותו (שניים היכולים להיות אחד), והם מקוריים לרמב”ם: אולי

1. הרשב"א הגדיר מלכתחילה את הבעייתיות שבדחיית טענת האשה בכך שטענה זו נכללת בתחום הכלל „שוויה אנפשיה חתיכה דאיסורא“ לכן, לכאורה, יש לקבל את טענתה. הסברו למסקנת המשנה, המתירה את האשה לבעלה, מתבסס על ההנחה שהכלל „שוויה אנפשיה“ לא יעזור לאשה במקרה של טענת „טמאה אני לך“ מכיוון שלחכמים יש יכולת לעקוף את „זכותה“ לאסור עצמה בכך שיפקיעו מלכתחילה את קידושיה. נמצא שבשעה שנאנסה או זנתה – היתה פנויה.⁴² בכך יעקרו את האיסור ממנו היא חוששת. הסיבה לצעד קיצוני שכזה הוא החשש ש„נתנה עיניה באחר“ ובכדי לגדור אפשרות כזו חסמו חכמים את הדרך בפני נשים אלו על ידי הפקעת הקידושין מעיקרם.⁴³

2. הר"ן מעלה אפשרות נוספת לסיבת דחיית טענת האשה.⁴⁴ מצד הדין לא היה בטענה „טמאה אני לך“ בכדי לשמש בסיס לאיסור האשה על בעלה.⁴⁵ למרות זאת, כבר בתקופה קדומה תקנו חכמים שיש לקבל טענה זו, מפני שאלמלא היה בטענה זו אמת, לא היתה האשה מבזה עצמה לטעון כך. בשלב מאוחר יותר הבינו חכמים שהנסיבות השתנו והנשים מסוגלות לשקר ולטעון זאת בכדי להוציא גט מהבעל, מפני ש„נתנו עיניהם באחר“ לכן החזירו את הדין המקורי למקומו. דהיינו, אין בטענת „טמאה אני לך“ בכדי לאסור את האשה על בעלה.⁴⁶

42 רשב"א על בבלי, נדרים, צ ע"ב: „ומסתברא לי דתנאי ב"ד הי' כדי שלא יהיו בנות ישראל פרוצות ומפקיעות עצמן מידי בעליהן ומשום מיגדר מלתא תקון הכי דב"ד מתנין לעקור דבר מן התורה כל היכא דאיכא משום מיגדר מלתא... אלמא כל היכא דאיכא למיגדר בהא ב"ד מתנין לעקור דבר מן התורה, ולא שחכמים עוקרין דבר מן התורה מדעתן אלא אחת ממצות התורה היא לשמוע אל דברי השופט אשר יהי' בימים ההם וכל שהן רואין להתיר לצורך מותר מן התורה, והכא נמי משום מיגדר מלתא שלא תהא כל אחת אומרת טמאה אני לך ומפקעת עצמה מיד בעלה, עמדו וגדרו והתנו שאפי' היה כדבריה שתהא מותרת... דכל דמקדש אדעתא דרבנן מקדש ואפקעינהו רבנן לקדושיה מיניה והויא פנויה בשעה שנאנסה“ וראה יחזקאל פאנעט, שו"ת מראה יחזקאל (בני ברק: מכון לספרים שע"י מוסדות בני שלשים, תשס"א) סי' פב, ד"ה „דגרסינן“ יש להדגיש שדי באמור כאן, בכדי להתיר את האשה לבעלה, אך מאידך, אם יחליטו על פירור, הרי שאין היא משוחררת מחובת גט לחומרא, שהרי חיה עם בעלה שלא לשם זנות.

43 ניתן להתרשם מדברי בעלי ה„תוספות“ עד כמה מוחשי ואמיתי היה החשש לטענה שקרית מצד נשות מערב אירופה בתקופתם (יבמות, כד ע"ב, ד"ה „אמר“): „דלפי שראו חכמים שנתקלקלו הנשים ליתן עיניהם באחר ורוב האמורות כן משקרות לכך נראה להם להתירן“ וראה על כך אצל גרוסמן, חסידות ומורדות, עמ' 443–444.

44 לאחר שהוא דוחה את הסבר „הפקעת הקידושין“ בגלל החיסרון שבו: אם נבעלה האשה לממזר או נתן, תהיה אסורה לבעלה, גם אם נבעלה כפנויה, והמשנה, בסופו של דבר, מתירה את האשה לבעלה, ללא הסתייגות מאפשרות שכזו. מלבד זאת, יש להוסיף את הבעייתיות שב„הפקעת הקידושין מעיקרא“ יתכן ומהלך קיצוני שכזה נדרש במקרים מסוימים, אך כאן מדובר על פרשנות לתפיסה הלכתית האמורה להיות מיושמת מלכתחילה, בכל פעם בו טען „טמאה אני לך“.

45 ר"ן על בבלי, נדרים, צ ע"ב: „דמשנה ראשונה לא דינא קתני דמדינא ודאי אין האשה נאמנת לומר טמאה אני לך להפקיע עצמה מבעלה שהיא משועבדת לו אלא משום דהא מילתא דטמאה אני לך כסיפא לה תקינו כמשנה ראשונה להאמינהו דאי לאו דקושטא קאמרה לא הות מזלזלה נפשה למימר הכי ומכי חזו רבנן בתראי דאיכא למיחש לשמא תהא נותנת עין באחר אוקמוה אדינא“ על הסיבות האפשריות לכך שמלכתחילה, יש מקום לדחות את טענת האשה, ראה בהמשך.

46 ניתן למצוא בתלמוד לא מעט מקרים בהם חוששים חכמים לטענה שקרית מצד האשה. בגלל ש„נתנה עיניה באחר“ כנגד חשש זה עומדת החזקה התלמודית – „אין האשה מעיזה פניה בפני בעלה“ רב המנונא יישב את הכללים הסותרים, בכך שחילק ביניהם: כאשר האשה יודעת שבעלה לא יוכל בוודאות להכחיש את טענתה, יהיה לה העזו לטעון טענה שקרית זו, מה שאין כן כאשר האשה יודעת שבעלה יכול לשלול בוודאות מוחלטת את טענתה. במקרה כזה – קובעת החזקה התלמודית – אין האשה תעז

לציין שניתן להצביע, כפי שאכן עשו מספר פוסקים, על הקבלה בין מקרי הודאה הנוגעים לעברו או עתידו האישי של המודה, לבין הפללה עצמית בענייני ממון, עליה נאמר הכלל, "הודאת בעל דין כמאה עדים"³⁷ היוצא מן הכלל במקרה זה תהיה ההפללה העצמית שיש בה משום השלכות מחייבות בנוגע לזולת.³⁸

2. כאשר אדם טוען שדבר או עניין מסוים נאסר עליו, הרי שיש לקבל את טענתו כטענת אמת. כלל הלכתי זה מכונה, "שוויה אנפשיה חתיכה דאיסורא" במקרה בו גוררת טענה זו הפללה עצמית, הרי שיש לקבלה, למרות שבדרך כלל, "אין אדם משים עצמו רשע" הראשונים חלוקים במקורה הרעיוני של קביעה זו: שיטה אחת מבססת את הכלל, "שוויה" מתוקף כוחו של הכלל, "הודאת בעל דין כמאה עדים"³⁹ כלל זה מעניק נאמנות לקביעתו של אדם, המחייבת אותו עצמו בממון.⁴⁰ בהתאם לכך, יש לראות בכלל, "שוויה" הרחבת הנאמנות גם לתחום האיסורים. אך בכדי לשמר את רוח הכלל המקורי – "הודאת בעל דין" תיושם הרחבה זו רק כאשר הדברים נוגעים ל"בעל הדין" עצמו. אחרים רואים בו הרחבה של הלכות נדר. כשם שיש ביכולתו של אדם לנדור ולאסור על עצמו את המותר לו, כך יש להכיר בזכותו לאסור על עצמו, גם כאשר הדבר יגרוור הפללה עצמית, וללא כל קשר למידת נאמנותו בעניין. גם כאן, ישנה הגבלה עקרונית ובסיסית. כשם שאדם לא יכול לנדור ולחייב בכך את זולתו, כך גם אין טענת אדם, "שוויה אנפשיה חתיכה דאיסורא" יכולה לפעול לחובת אדם אחר.

מכל העולה עד כאן, ניתן לשער שהתייחסות ההלכה לטענת, "טמאה אני לך" כפי שהיא מוצגת במשנה, מבוססת – מחד – על הכלל, "אין אדם משים עצמו רשע" ומאידך – על שני גורמים אלו המובאים כאן, והמהווים סיבה לצמצום או ביטול הכלל, "אין אדם משים עצמו רשע" ולהלן ביתר הרחבה.

לאחר שהוצגו עקרונות היסוד המשפטיים, המהווים רקע בסיסי אפשרי למשנה, יש להציג את תפיסתם הפרשנית של הראשונים למשנת, "טמאה אני לך".⁴¹ ניתן למצוא בספרות הראשונים שני פתרונות מרכזיים לשאלה כיצד לוקחים על עצמם חכמי המשנה את האחריות להכריע בצורה כוללת, שאישה הטוענת, "טמאה אני לך" איננה דוברת אמת ומותר לה ואף מוטל עליה להמשיך ולחיות עם בעלה:

37 ראה קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 294–295, ובהערות, שם.

38 כפי שלכאורה ניתן להסיק בנוגע למקרה של טענת, "טמאה אני לך" וראה על כך בהמשך.

39 קצות החושן, סי' לד, ד: "ומקצת שכתבו גם בדין שויה אנפשיה חתיכה דאיסורא (בבלי, כתובות כב, א) הוא ג"כ מתורת נדר, אבל ראיתי במוהרי"ט (חלק ג, סי' א, ד"ה, "ולא תימא") שדחה דבר זה וכתב דאם היה מתורת נדר הוה מהני ביה שאלה ע"ש. ולפי דרכינו גם בדין שויה אנפשיה חתיכה דאיסורא הוא מדין נאמנות, דכיון דהאמין התורה לכל אדם על עצמו א"כ בין בממון בין באיסור לעולם נאמן על עצמו"; שער המלך, אישות, ט, טו: "וכבר ראיתי למוהר"י באסאן ד"ל בתשובה סימן פ' שנסתפק בזה בכ"מ [=בכל מקום] שאמרו שווייה אנפשיה חתיכה דאיסורא אם מדין נדרי איסור נגועו בה... או אינו אלא מדין הודאת בעל דין, יע"ש".

40 תשובות רב נטרונאי גאון (מהדורת ברודי), חושן משפט, סי' שעו: "וזה שאמרו הודאת פיו כמאה עדים דמי, הני מילי לענין ממון, אבל לענין רציחה ועבירות, אדם קרוב הוא אצל עצמו ואין אדם משים את עצמו רשע"; רש"י, "במות, כה ע"ב: "ואין אדם משים – את עדותו עדות אצל עצמו ליעשות רשע והא דקי"ל (ב"מ, ג ע"ב) הודאת פיו כמאה עדים דמי הנ"מ לממונא אבל לקנסא ולעונש מלקות וליפסל לא"; יוסף ב"ר מאיר הלוי אבן מיגאש, שו"ת הר"י מיגאש, סי' קפו: "ולסיבה זו אין האדם חייב במה שמורה על עצמו במה שהוא חייב מיתה או מלקות כמי שהוא חייב במה שמורה על עצמו ממון"; רמב"ם, זכייה ומתנה, ד, יב. טוען ונטען, ו, ג.

41 ראה עמ' 1.

אם נטיל ספק בנאמנותו, עדיין יש בכוחו לטעון „שוויה אנפשיה“ מצב כזה יתכן לפי התפיסה הרואה בכלל „שוויה“ תוצר של הלכות נדר, כאמור לעיל.

2. לכאורה, יש בכוחו של הכלל „שוויה אנפשיה“ לגבור על הכלל „אין אדם משים עצמו רשע“ למרות שהוא נוגע גם לזולת ולא רק לבעל הטענה. עד כדי שחכמים לא מצאו דרך להחלישו ונאלצו לעקפו לחלוטין, ע"י הפקעת הנישואים מעיקרם.

הנקודה השנייה שהוזכרה כאן, בעייתית במיוחד ומטילה ספק באשר למידת התאמתו של מודל זה למקרה של טענת „טמאה אני לך“ כאשר הבעל לא מעוניין בפירוק הנישואין: כיצד ניתן לומר שיש בכוחה של האישה לחוב את בעלה ולאסור עצמה עליו, ללא קשר למידת אמינות טענתה ורק מכוח נדרה? לכן, ספק רב אם ניתן לראות במודל זה את הבסיס להתייחסות ההלכה במקרה של טענת „טמאה אני לך“ מצד האישה, על שני גלגולים המתוארים במשנה.⁴⁸

לשיטת הפרשנות השניה, טענתה-עדוטה של האישה, לא תועיל מלכתחילה בכדי לאסור עצמה על בעלה. חלותו של הכלל „שוויה אנפשיה“ היתה מוגבלת במקרה של טענת „טמאה אני לך“ מכיוון שלקביעה זו יש השלכות ישירות על מערכת היחסים המשותפת לה ולבעלה. מערכת יחסים זו מבוססת על חובות הדדיים שאין בכוחה של האישה להתחמק מהם ע"י הצהרה שאיננה מוכחת כדין.⁴⁹ הראשונים מנסחים זאת ע"י הגדרת האישה כ„משועבדת“ לבעלה.⁵⁰

בשלב השני, המאוחר יותר, המתואר במשנה במילים: „בראשונה היו אומרים“ – תיקנו חכמים שיש לקבל את טענת האישה ולאסור אותה על בעלה, בגלל שלא היה זה סביר שאישה תעזי לטעון טענה שכזו אילולי היתה נכונה.⁵¹ בשלב השלישי, המתואר במשנה במילים: „חזרו לומר“ – נקבע ששוב יש לחזור לדין המקורי ולדחות את טענת האישה, מכיוון שנוצרה אוירה בה יש סבירות לטענה שקרית מצד האישה, בכדי לקבל גט מבעלה.

48 יש לציין שמהנחה א' המתוארת כאן, עולה לכאורה, שלפי מודל משפטי זה המתואר ברשב"א, אין הבדל מהותי בין קבילותה של טענת „מאס עלי“ לבין קבילותה העקרונית של טענת „טמאה אני לך“ אך לאור המשתמע מהנחה ב', יש קושי לראות במודל זה בסיס משפטי היכול להסביר את משנת „טמאה אני לך“ כמו כן, יש להדגיש שהקושי בהעמדת מודל זה כבסיס משפטי, נוגע רק למקרה בו האישה טוענת ללא גיבור, אמון והסכמה מצד בעלה, שכן במקרה זה טענת האישה נחשבת כחבות עבור בעלה. מצב דברים שונה יכול להיווצר במקרה של טענת האישה כאשר דבריה נתפסים כאמינים, והשלכתם מקובלת על בעלה (ואפילו בליט ברירה ומתוך תפיסת העניין כטרגי). במקרה כזה ניתן לומר שטענתה לא נחשבת כחבות עבור הבעל אלא כזכות. אך, כאמור, לא זהו המקרה הנדון כאן. וראה להלן, עמ' יט.

49 וראה הרב דב כ"ץ ועוד" יצחק דלנור, עורכים, פסקי דין של בתי הדין הרבניים האזוריים בישראל (ירושלים: דפוס ווייס, בהשתתפות משרד הדתות, תשי"ד-) ו, עמ' 140: „ולא שייך לומר שויתה אנפשה חד"א, כיון שבאה להפקיע עצמה מבעלה, וכדק"ל בנדרים (צ"ב) גבי טמאה אני לך שאינה נאמנת להפקיע שעבודא דבעל וחישי' שמא נתנה עיניה באחר“

50 ראה לעיל, הערה 45.

51 שער המלך, אישות, ט, טו, עמ' תנ, ד"ה „הן“, „הן אמת שזו היא שקשה בעיני... דכל דמשעבדא ליה לא אמרינן שויה אנפשיה חתיכה דאיסורא, שהרי מתני' דנדרים דהאומרת טמאה אני לך בנשואה נמי מיירי, ואפ"ה בראשונה היו אומרים דהאומרת טמאה אני לך נאמנת... והנראה אצלי... דמדניא ודאי אין האשה נאמנת לומר טמאה אני לך להפקיע עצמה מבעלה שהיא משועבדת לו, אלא משום דהא מילתא דטמאה אני לך כסיפא לה, תקנו במשנה ראשונה להימנה, דאי לאו דקושטא קאמרה לא הוה מזלזלה נפשה, ומכי חזו רבנן בתראי דאיכא למיחש לעיניה נתנה באחר, אוקמה אדינא“

שני הנימוקים המובאים לעיל משמשים בצורה כזו או אחרת את הראשונים כנסותם להבין את הלגיטימיות שבדחיית טענת האישה ונתינת הכשר להמשך חייה המשותפים עם בעלה.⁴⁷ כיצד משתלבים שתי שיטות הפרשנות הנ"ל, עם המודלים המשפטיים השונים העומדים בבסיס דיני ההפלה העצמית במשפט העברי?

ניתן, לעניות דעתי, לקשור בין הגורמים השונים באופן הבא: לשיטת הפרשנות הראשונה המוצגת לעיל, קבעו חז"ל, "בראשונה" שלמרות הכלל, "אין אדם משים עצמו רשע" ניתן לקבל את טענתה-עדותה של האישה, כפי שיש לקבל במקרים מסוימים את נדריה. שיטה פרשנית זו הדגישה, למעשה, את כוחו של הכלל התלמודי, "שוויה אנפשיה חתיכה דאיסורא" כגובר על הכלל, "אין אדם משים עצמו רשע" אכן, כל זה היה, "בראשונה" השינוי שחל ביחס חכמים לטענת האישה, לא שינה את תוקפו ומידת חלותו של הכלל, "שוויה אנפשיה" שהרי יכולתה של האישה לנדור איננה קשורה למידת אמינותה. חכמים, לשיטה זו, נאלצו לעקוף את זכות האישה לאסור עצמה על בעלה, ע"י הקביעה שצער כזה מצידה של האישה יגרור בתגובה צעד קיצוני של הפקעת הנישואין מלכתחילה. לכן, יש להניח:

1. שיטה זו מאפשרת לבעל הדין לטעון, "שוויה אנפשיה" ללא קשר למידת נאמנותו. גם

לטעון טענה שקרית מול בעלה. ובלשון רב המנוא (בבלי, נדרים, צא ע"א): "האומרת טמאה אני לך... לא מהימנא, התם הוא דמשקרה, דידעה דבעלה לא ידע בה, אבל גבי גרשתי דידע בה – מהימנא, דחזקה אין אשה מעיזה פניה בלעלה" ראה גם בפירוש הר"ן על בבלי, נדרים, צא ע"א: "כללא דמלתא כל מילי דיכול בעל לידע ומכחישתו נאמנת, אבל במילי שאין בעל יכול לידע אינה נאמנת" כמה שנוגע לנדון כאן, לכאורה, מכיוון שאין הבעל יכול לשלול בוודאות את טענת האישה (גם במקרה אונס וגם במקרה זנות), אין להאמין לאישה מכח החשש, "עיניה נתנה באחר".

47 הסבר נוסף המופיע אצל הראשונים מנמק את דחיית טענת האישה מכח העובדה שאשת כהן שנאנסה איננה אסורה מכח עצמה על בעלה הכהן, אלא שהכהן אסור בה. במקרה שבו לא הוכחה טענת אשת הכהן, הרי שאינו מחויב להאמין לה (וריתכן שנתנה עיניה באחר). ומכיוון שהוא מותר בה, אף היא מותרת בו (ראה רשב"א על בבלי, נדרים, צ ע"ב: "חזרו לומר האומרת טמאה אני לך תביא ראייה לדבריה, וא"ת והא כיון דאמרה הכין שויתה ביאת הבעל חתיכה דאיסורא והיכי מאכילין לה דבר האסור לה... ותייך ה"ר אליעזר ז"ל דזונה לא מוזהרת מכהן אלא כל היכא דאיהו מוזהר... איהי מוזהרת דלא יקח כתיב ואין הזונה מוזהרת אלא הכהן הוא שמוזהר"). העמדה זו נתפסה כבר על ידי הראשונים כבעייתית במיוחד. (ראה תוספות על בבלי, נדרים, צ ע"ב, ד"ה, "חזרו"; רשב"א, שם). מה גם שהיא נותנת מענה רק למקרה של אשת כהן בו עוסקת המשנה ולא למקרה של "אשת ישראל" מאידך, היא משקפת נקודה מהותית לדיון כאן: יש לחלק ולהבחין בין זכותה של האישה לטעון טענה כזו או אחרת, לבין מידת המחויבות של הבעל לקבל טענה זו כל זמן שלא הוכחה. נקודה מהותית זו נוגעת גם למקרה של אשת ישראל הטוענת (מבלי שטענתה הוכחה) שזנתה.

נקודה מרכזית נוספת העולה מספרות הפוסקים היא שטענת האישה אמנם נדחת בהיבט הדין ה"איש" אך לא בהיבט הממוני. לכן הפוסקים מדגישים שלמרות שאישה זו מותרת לבעלה, לא תהיה זכאית לכתובתה. וראה רמב"ם, אישות, כד, יח: "אמרה לו אשתי שזינתה תחתיו ברצונה אין משגיחין בדבריה... אבל אבדה כתובתה עיקר ותוספת ואבדה הבליות שהרי הודת בזנות"; מגיד משנה, אישות, כד, יח: "ומסוגיא זו יש ראייה למ"ש רבינו בכאן שהיא מפסדת כתובתה בהודאתה ואע"ג דק"ל כמשנה אחרונה מ"מ לענין ממון הודאתה שזינתה ברצון כמאה עדים"; שולחן ערוך, אבן העזר, סי' קטו, סע' ו: "אין עדים שזינתה, אלא שהיא אומרת שזינתה, אין חוששין לדבר זה לאוסרה... אבל איבדה כתובתה, עיקר ותוספת ומה שאינו בעין ממה שהכניסה לו"; שו"ת נודע ביהודה, מהדורה קמא, אה"ע, סי' עב, ד"ה, "והנה ע"כ"; "ועוד שהרי הרמב"ם כתב זה לענין אשה שמורה שזינתה שהפסידה הכתובה ואעפ"כ מותרת לבעלה לפי דפליגין דיבורה ואנו מאמינין כל היוצא מדבריה שאבדה הכתובה אבל אין מאמינין לה שזינתה ונאסרה על בעלה" המושג, "פלגינן דיבורה" נדון בהרחבה על ידי קירשנבאום, הרשעה עצמית במשפט העברי, פרק יח.

בכל אופן, נקבע לבסוף במשנה שאין לקבל את טענת „טמאה אני לך“ משום שאותה נאמנות מיוחדת לה זכתה האישה בפרק זמן מסוים – צומצמה ונחלשה, ולא היה עוד בכוחה לעמוד מול עקרון אי-קבילות ההפללה העצמית.

מכל האמור לעיל עולה שאין כלל מקום להשוות בין אופן התייחסותה של ההלכה לטענת „טמאה אני לך“ לבין אופן התייחסות ההלכה במקרה של טענת „מאיס עלי“ הראשונה מבין השניים שייכת לתחום ההרשעה וההפללה העצמית, ועל בית הדין להתייחס אליה ולבחון את קבילותה בהתאם למודלים המשפטיים הקיימים בתחום זה.

כך גם, נעלמת התמיהה מדוע לא קיבלו חכמי ישראל, בתקופת הגאונים ובחלקה של תקופת הראשונים, את טענת „טמאה אני לך“ כאמינה מכח טענת „מיגר“⁵⁵ שהרי בבסיס טענת ה„מיגר“ עומדת ההצהרה, „האמינו לי שאני דובר אמת, מכח העובדה שאם לא הייתי דובר אמת, הייתי יכול לטעון טענה טובה יותר“ במקרה של טענת „טמאה אני לך“, אותה יש להגדיר כמקרה של הפללה עצמית, אין לטענת „מיגר“ מקום. שהרי אי-קבילותה של טענת האישה „טמאה אני לך“ נשענת על עקרון דוגמטי ומקיף שאיננו אמור להיות מושפע ממידת מהימנותה של האישה.

על פי התפיסה הרואה בכלל „שוויה“ תוצר של הכלל „הודאת בעל דין“ הגיעו חז"ל למסקנה שאין האישה ראויה עוד לאמון מיוחד המסיר את כפיפותה לכלל „אין אדם משים עצמו רשע“. לכן, חוזרים כללי ההפללה העצמית לחול עליה באופן מוחלט ודוגמטי, ובכללם אי-נאמנות לטעון טענת „מיגר“⁵⁶.

טענת הבעל – „נטמאת ואסורה את עלי“

עד כאן נסב הדיון סביב טענתה של האישה והמודלים המשפטיים האפשריים, העומדים בבסיס התייחסות ההלכה לטענה זו. אך מספרות הפסיקה והתשובות משתקף דיון רחב היקף, הנוגע בעקיפין לטענת האישה. מה קורה כאשר הבעל הוא הטוען, „טמאה את לי“? מסתבר שדיון חכמי ההלכה בעניין טענת הבעל איננו מנותק ממכלול ההיבטים הקשורים לטענת האישה, ועל כן, ניתן לבחון את מידת התאמתם של המודלים המשפטיים שנדונו לעיל, אף לאור הדיון בטענת הבעל, „טמאה את לי“.

יש לציין שהדיון סביב טענת הבעל עמד בצל האיסור – שקיבל את תוקפו בראשית תקופת הראשונים – לגרש את האישה בעל כורחה. מעבר לכך ובאופן כללי, טענת הבעל – „טמאה את לי“ – עומדת לעיתים בניגוד לעמדת האישה, אך לעיתים היא מבוססת על טענת האישה עצמה – „טמאה אני לך“ לכן יש להבחין בין הנסיבות השונות והמקרים השונים:

1. טענת הבעל, בשלב שלפני התקנה האוסרת גירושי אישה בעל כורחה.

ואז אם ישמע ויתרצה לכן אפשר דאסורה להנשא מדינא עד שתחלוץ שני' דהוא נאמן דמה לו לשקר וגם להבזות עצמו... וגם אינו משים עצמו רשע שהרי דרך תשובה אומר כן ע"כ יש לחוש כן" וראה גם דבריו של קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 295: „חייבים אנו לציין ולהדגיש שאף במקרים שההודאה נובעת מכוונה לשם שמים ולכן נשמעת בבית הדין, אין בכוחה לפגוע באחרים“.

55 דהיינו, אם כל רצונה של האישה היה בגט, היתה יכולה למרוד בבעלה מכח טענת „מאיס עלי“ וראה לעיל, הערה 21.

56 יש לציין שישנם המטילים ספק בנוגע לאי-חלות טענת „מיגר“ במקרים של הפללה עצמית (ראה שיפתי כהן, יורה דעה, קסט, אות עט. וראה קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 288, הערה 86). הללו יאלצו להתמודד עם הקושי, מדוע אם כן לא התקבלה טענת „טמאה אני לך“ במשך מאות שנים מכח טענת ה„מיגר“ הנ"ל.

התמורות העולות מהמשנה משקפות „גמישות” בנוגע לזכות האישה לשוות עצמה אסורה על בעלה. „שיעבוד” האישה לבעלה, מהווה נתון שאינו משתנה, האמור לשלול את זכות האישה לשוות עצמה כאסורה על בעלה. לעיתים, כאשר תהיה סיבה מספיק טובה לכך, יאפשרו חכמים לאישה להפעיל על עצמה את הכלל „שוויה אנפשיה” שינוי המגמה ההלכתי, נובע אם כן, משינוי בחזקת נאמנותם של כלל הנשים ולא במידת „שיעבודם” תקנת חז”ל המוזכרת בחלקה הראשון של המשנה – לקבל את טענת האישה, היתה למעשה, הרחבה זמנית של נאמנות האישה מתחום הממונות גם לתחום האיסורים, לתחום המשותף למערכת יחסיה עם בעלה.

ניתן אף למצוא ביסוס משפטי להרחבת מידת הנאמנות אותה העניק „בראשונה” חז”ל לאישה, מתוך העקרונות המשפטיים להיקפה ומידת חלותה של ההפלה העצמית. כפי שכבר נאמר, הכלל „אין אדם משים עצמו רשע” נדחק ואף מתבטל במקרים בהם ניתן להעריך שההפלה העצמית נובעת מרצונו של אדם לחזור בתשובה, לתקן דרכיו ואף למנוע עוול עתידי לעצמו ולזולתו.⁵² נכון הדבר שגם במקרה כזה תוגבל הנאמנות ממנה ינהג, ולא תאפשר לו בהודאתו לחוב אחרים, אך יתכן ואותם חכמים שתקנו לקבל „בראשונה” את טענת האישה, סברו שלאור העובדה שחזקה על הנשים בתקופתם שלא יבזו עצמם בטענה שכזו, יש לראות בטענה זו כהודאת בעל דין לשם שמים וחזרה בתשובה, ובכזו, יש בכוחה להחיל את הכלל „הודאת בעל דין כמאה עדים” תחת הכלל „אין אדם משים עצמו רשע” ואכן כך מסביר בעל שער המלך:

וא”כ דכוותא באומרת טמאה אני, לא שייך למימר אין אדם משים עצמו רשע, דאיכא למימר דלטובה קא מכוונא, לעשות תשובה, ואינה רוצה לעשות איסור כל ימיה, כיון דאסורה על בעלה ולבועל, ומש”ה ודאי אין לנו לומר שלא תהא נאמנת ושיבעול בעילת איסור לפי דבריה.⁵³

כאשר לבעיית ה„חבות” לזולת, ניתן ואף ראוי במקרה כזה לומר שאין מדובר פה כלל על חוב לבעלה, אלא זכות, שהרי האמון לו זוכה האישה, משמעותו: ביסוס מוסרי ולא רק משפטי לצדקת טענתה. הרי שיש לו לשמוח על שמונעים ממנו לחיות חיי אישות עם האסורה לו, בשונה משיטת הפרשנות הראשונה, שאיננה מבוססת כלל על אמון באישה.⁵⁴

52 ראה קירשנבאום, הרשעה עצמית במשפט העברי, עמ’ 10.

53 שער המלך, אישות, ט, טז, ד”ה „האמנם” וראה דברי קירשנבאום, הרשעה עצמית במשפט העברי, עמ’ 294: „יש ויהא נאמן אדם בדבריו – ואפילו אם יש בהם משום השמצה עצמית – אם נראים הדברים שהמניעים הם לשם שמים: הודאתו היא חלק מחזרה בתשובה בהתייחסו לעבר, או שהוא מודה כדי להנצל מביצוע עברה בעתיד או להציל אחרים ממנה... הנאמנות היא מוגבלת, למטרה מסוימת. אין בה כדי לפסול לעדות. בית דין פועל במגמה לסייע לו לצאת ידי שמים... פועלים כאן גורמים הלכתיים, חיצוניים; ואילו הכלל „אין אדם משים עצמו רשע” בעצם נותר בעינו”.

54 בדיון על שיטת הפרשנות הראשונה, נתפסה טענת האישה כ„חבות” שלא ניתן לראות בה צד של „זכות”, מכיוון שלשיטת הפרשנות הראשונה, קבילות טענת האישה איננה פרי אמון בדבריה, אלא תוצר של מעין נדר סתמי. מדוע, אם כן, אמור „נדר” זה להחשב כ„זכות” עבור הבעל? אך כאמור, לשיטת הפרשנות השנייה, קבילות טענת האישה היא פרי אמון בדבריה, ולכן יש הגיון לראות בטענתה כ„זכות” עבור הבעל. בעניין הרשעה עצמית שיש בה לחוב אחרים מתלבט גם ה„חתם סופר” (משה בן שמואל סופר, שו”ת חתם סופר (ירושלים): מכון להוצאת ספרים וחקר כתבי-יד – על-שם החתם סופר, תשס”ח) ד (אה”ע ב, סי’ צא, ד”ה „מ”מ”) המתייחס לכך בזהירות רבה: „מ”מ ניל טוב לומר לו אין אתה נאמן ואיתתא דא שרי לעלמא אך אם אתה יודע בנפשך שהאמת אתך וחושש אתה למכשול והקולר יהי’ תלוי על צווארך ורוצה אתה לחלוץ לה שנית באפס דמים ולא שום הוצאה ולא משך זמן לצעורי’ אזי היא תחלוץ לך

נוספות: מכיוון שדרכו של הבעל לנתינת גט מסיבות סתמיות – נחסמה. נדרש היה הבעל החפץ לגרש את אשתו, לשכנע אותה שעדיף לה לקבל את גיטה, או לחילופין, לטעון כנגדה טענה בעלת משקל חמור במיוחד, כגון – „טמאה את לי“ חכמי דורו של רבינו גרשום ואילו שאחריהם התמודדו עם טענות מסוג זה בדרך פשוטה: הבעל נדרש להוכיח את טענתו ולשכנע את בית הדין שאכן יש אמת בדבריו. לכאורה, חכמי תקופת הראשונים „שאלו“ את נימוקם של התנאים הנוגע לטענת האישה – „טמאה אני לך“ ועשו בו שימוש כנגד בעלים שמאסו בנשותיהם. טענת הבעל נדחתה על בסיס העובדה שאסור לו לגרש את אשתו בניגוד לרצונה ועל בסיס החשש – „שמה עיניו נתן באחרת“ כך למשל עולה מדברי מרדכי בן הלל הכהן (המרדכי), שלמה בן אדרת (הרשב"א), משה איסרלס (הרמ"א), שלמה לוריא (המהרש"ל), החתם סופר והנודע ביהודה.⁶²

אך לאור ברור המודל המשפטי העומד בבסיס סירוב חז"ל להכיר בטענת „טמאה אני לך“, מתעוררת השאלה, האם יש מקום ל„השוות“ בין ההתייחסות המתבקשת לטענת האישה „טמאה אני לך“ לבין ההתייחסות המתבקשת לטענת הבעל „טמאה את לי“ הרי אי-קבילותה של טענת האישה נובעת מהעובדה שטענה זו היא בגדר „הרשעה עצמית“ מה שאין כן במקרה של טענת הבעל „טמאה את לי“ בנוסף לכך, יש לזכור שמול הגדרת טענת האישה כ„הרשעה עצמית“ ניצבה העובדה שיש משקל רב לדבריה מתוקף הכלל „שוויה אנפשיה חתיכה דאיסורא“ מדוע, אם כן, לא נקבל את דברי הבעל הטוען שאשתו אסורה עליו, מכת הכלל „שוויה אנפשיה“?⁶³

62 ואילך. ראה למשל, ולדנברג, שו"ת ציץ אליעזר, ח"י, סי' מו, ד"ה „דהנה חרם“, „דהנה חרם זה של רבינו גרשום מאור הגולה ז"ל שהבעל לא יגרש את אשתו בעל כרחא דעת הרבה מגדולי הפוסקים ז"ל אשר בית ישראל נשען עליהם שחרם זה, שלא כחרם שלא לישא אחרת על אשתו, נתפשט ונתקבל בכל ישראל בכל מקום שהם ובאין הבדל בין אשכנזים לספרדים“

62 מרדכי, קידושין. פרק שלישי, אות תקל: „מעשה באחד שאסר אשתו עליו ואמר שזנתה מאחר ונשאל למורי הר"ר שמעון אם נאמן אם לאו והשיב כמדומה לי ששמעתי מרבוני האומרת טמאה אני לך תבי' ראי' לדברי' ואינה אסורה עליו וא"כ כופין אותה ומשמשו וכו' ולפי הסברה הואיל ונגזרה גזירה שלא לגרש אשתו כ"א ברצונה חיישי' שמה עיניו נתן באחרת ומותר בה וכופין אותו... עכ"ל הר"ר שמעון“; שו"ת הרשב"א, א סי' אלף רלז, ד"ה „תשובה ראיתי“, „דכל מה שנתן עיניו לגרשה אנו חוששין לו וחזר זה להיות כמשנה אחרונה דהאומרת טמאה אני לך. דכיון שאינו יכול לגרש אלא מדעתה... לפיכך חוששין כמו שחששו באומרת טמאה אני לך“; שו"ת הרמ"א סימן יב ד"ה „א"כ בנדון“, „אבל הכא אע"ג דיש מקצת עדות מפסולי עדות שעשתה דברים מכוערים מ"מ מאחר דלא מהני עדותן אלא ע"י האמנת הבעל ועל זה ליכא רגלים לדבר שהאמת אתו שמאמינם כי אפשר לחוש שישקר... ואפילו אם נאמר דיכול לשווייה אנפשיה חתיכה דאיסורא ולאסורה עליו מ"מ נלכד בחרם ר"ג... ומ"מ נראה דלאו כל כמיניה לאסורה עליו כלל, וכופין אותו לשמש עמה ולקיים עונתו עמה“; שו"ת מהרש"ל, סי' לג, ד"ה „רעכשיו ביארנו“, „השתא מאחר שאיכא תקנת ר"ג שלא לישא אשה על אשה ולא לגרשנה בע"כ למה לא ניוחש ג"כ לגבי בעל היכא שאמר מאמין אני לעד אחר או מאמין אני לפסולי עדות... ונימא ג"כ שענינו נתן באחרת“; שו"ת חתם סופר, ד (אה"ע ב), סי' קא: „הנה באומרת טמאה אני לך למשנה אחרונה דכופי' אותה ומשמשו ע"י ח"י רשב"א שליחי נדרים וביתור בחי' רישב"א שם ב' נזעמים א' דרוב שקורי דכופי' שא"א לה לצאת מבעלה והיא נתנה עיני' באחר ע"כ עשתה תחבולה זאת וכ"כ רא"ש פ"ב דיבמות וסברא זו שייך גם בבעל אחר תקנת רגמ"ה שלא לגרש בע"כ“; שו"ת נדע ביהודה מהדורה תנינא – אה"ע, סי' יב, ד"ה „רבדין“

63 יש לציין שחלק מהראשונים הבחינו בין שלילת זכותו של הבעל לגרש את אשתו, לבין היותה אסורה עליו. לאור הכלל „שוויה אנפשיה חתיכה דאיסורא“ וראה בהקשר לכך את דברי המהרש"ל, ים של שלמה, יבמות, פרק ב, סי' יח, ד"ה „גם קרוב“, „וכן כתב הרשב"א בתשובה (סימן א' רל"ז) היכן שנתן עינו לגרשה, שאינו נאמן, ויתן לה שאר וסכות כל ימי חייה, אם אינה רוצה לצאת בגט, רק שהרשב"א כתב,

2. טענת הבעל בשלב שלאחר תקנה זו.

א. טענת הבעל, כאשר האישה מכחישה טענה זו.

ב. טענת הבעל, כאשר היא מבוססת או עומדת במקביל לטענת האישה.

כאמור, עד לנקודה זו, עסק הדיון בשאלת קבילותה של טענת „טמאה אני לך“ מצד האישה ביחס לבעלה. ומה בנוגע לטענת הבעל, הטוען „טמאה את לי“? התשובה לכך במקור תנאי:

בית שמאי אומרים לא יגרש אדם את אשתו אלא אם כן מצא בה דבר ערוה שנאמר „כי מצא בה ערות דבר (דברים כד, א). ובית הלל אומרים אפילו הקדיחה תבשילו שנאמר כי מצא בה ערות דבר. רבי עקיבא אומר אפילו מצא אחרת נאה הימנה שנאמר: והיה אם לא תמצא חן בעיניו.⁵⁷

המשנה מציגה מחלוקת תנאים בנוגע לשאלה, מהי עילה סבירה לגירושין. פרשנויות רבות ניתנו למשנה, אך באופן כללי ניתן לומר שבזמן שב"ש דרשו הוכחה מצד הבעל לקיומו של פגם חמור בצניעות האישה, הקלו ב"ה את דרישתם על הבעל המגרש. מבחינתם, די בשכנוע בית הדין שאין שביעות רצון מצד הבעל במה שנוגע להתנהלות האישה בביתו. כאסמכתא לתפיסה זו, מביאים ב"ה את הפסוק המזכיר את המונח „ערוה“ אך הם קושרים את המונח, מעבר להקשר המיני שלו, לנורמות התנהגות כלליות הקשורות להיגיינה וצניעות הפרט.⁵⁸ לטענת ר' עקיבא, בעל המעוניין לגרש את אשתו, נדרש אף לפחות מכך. ואכן, בתקופת התלמוד והגאונים, בעל שהיה מעוניין לגרש את אשתו, לא נתקל במחסום משפטי משמעותי.⁵⁹ אמנם, מדברי הראב"ן עולה שבראשית תקופת הראשונים, נתקנה התקנה הקובעת שעל הבעל להתחייב לסכום נדוניה גבוה משמעותית מהמקובל עד אז, וזאת על מנת – „שלא יהיו קלות בעיני בעליהן להוציאן“⁶⁰ אך עדיין, מדובר על תקנה שאינה רחוקה בזמנה מהתקנה כנגד גירושין כפויים, שהחלישה כשלעצמה את כוחו של הבעל ועליה ניסוב הדיון להלן.

לכן, עד לראשית תקופת הראשונים, לא נזקק כלל הבעל לטעון טענת – „טמאה את לי“ יותר מכך, טענה שכזו, ללא הוכחות ראיות, היו עלולות לפגוע באמינותו של הבעל בעיני בית הדין, כמי שמוציא לעז, לחינם, על אשתו.

במאה ה-11 קבע רבינו גרשום, „מאור הגולה“ בין שאר תקנותיו, שאסור לאדם לגרש את אשתו בניגוד לרצונה. תקנה זו נתקבלה בקהילות ישראל.⁶¹ אך לתקנה זו היו השלכות

57 משנה, גיטין, ט, י.

58 בכדי להבהיר את משמעותו של המונח „ערוה“ מסתמכים בית הלל, בניגוד לבית שמאי – על צרוף המילים – „דבר ערוה“ כביטוי מרחיב. וראה רש"י על בבלי, גיטין, צ ע"א: „ערות דבר – לב"ה משמע להו או ערוה או שאר דבר סרוחין“ וראה דברים כג, יג: „ויד תהיה לך מחוץ למחנה... והיה בשבתך חוץ וחפרת בה... והיה מחניך קדוש ולא יראה בך ערות דבר ושם מאחרך“

59 בבלי, בבא מציעא, יא ע"ב: „שאני גט, דאיתיה בעל כרחיה“; רמב"ם, גירושין, א, ב: „אם לא תמצא חן בעיניו, מלמד שאינו מגרש אלא ברצונו, ואם נתגרשה שלא ברצונו אינה מגורשת, אבל האשה מתגרשת ברצונה ושלא ברצונה“; שולחן ערוך, אבן העזר, סי' קיט, סע' ו: „לא יגרש אדם אשתו ראשונה, אלא אם כן מצא בה ערות דבר... ודוקא כימיהם שהיו מגרשין בעל כרחיה“ בנוגע למחלוקת ב"ש, ב"ה ור' עקיבא, ראה שמואל שי בן ר' אור שרגא פייבש, בית שמואל (דירנפורט, תמ"ט), אבן העזר, סי' קיט, ס"ק ב.

60 ספר הראב"ן, ר"י ע"ב: אפרים אורבך, בעלי התוספות: תולדותיהם, חיבוריהם ושיטתם (ירושלים: מוסד ביאליק, תשכ"ח) עמ' 157. וסטרליך, תמורות במעמד האישה במשפט העברי, עמ' 73.

61 בנוגע לשאלת מקורה של התקנה ויחסה לרגמ"ה, ראה וסטרליך, תמורות במעמד האישה במשפט העברי, עמ'

שיש לבטל את טענת האישה מכח החשש – „שמא עיניה נתנה באחר“ הרי שעל רקע תקנת רגמ"ה יש לבטל אף את טענת הבעל, משום החשש – „שמא עיניו נתן באחרת“⁶⁵ כפי שאכן נקבע במקרה בו הבעל מעצמו יזם טענה זו ואשתו מכחישתו. אך הראשונים עמדו על משקלה של טענת „שוויה אנפשיה“ הבאה, במקרה זה, מצד האישה והבעל כאחד – משקלה של טענת הבעל והאישה גדול דיו בכדי לאסרם זה על זה.⁶⁶ על רקע זה, ניתן להבין את דברי בעלי ה„תוספות“:

ומיהו נראה דאף למשנה אחרונה אם אומרת אשה טמאה אני לך ואמר הבעל שמאמינה דאסורה לו דאיהו שויה לנפשיה חתיכה דאסורא ואפי' תחזור בה האשה ותאמר באונס היה ויש אומרים דמשמתינא ליה על שגרם שתיאסר אשתו עליו ועובר על חרם תקנת רבינו גרשם.⁶⁷

את דברי בעלי ה„תוספות“ יש לחלק לשלושה חלקים:

1. במקרה בו האישה ובעלה טוענים שהם אסורים זה לזו, מקבילים את דבריהם על כל המשתמע מכך.
2. במקרה בו טענה האישה ובעקבותיה בעלה, שהם אסורים זה לזו, ולאחר מכן חזרה בה האישה מטענתה, אך הבעל עומד בטענתו שהיא אסורה לו – תתקבל טענתו של הבעל.
3. ישנם האומרים שיש להחרים ולנדות את הבעל כמי שגרם לביטול תקנת רגמ"ה.⁶⁸

לית מאן דפליג בדאמתלה שלה נעקרים גם דבריו... מכל הנימוקים הנ"ל אנו פוסקים: א. דוחים בזה את תביעת הבעל לגירושין, מחוסר עילה מספקת. ב. האשה היא בחזקת כשרות והבעל רשאי לחיות עמה בלי פקפוק כל שהוא אף אם בא לצאת ידי שמים“

65 ראה פסקי דין רבניים, ב, עמ' 203.

66 וראה בעניין זה את דברי הנודע ביהודה בתשובותיו, מהדורה תנינא – אה"ע, סי' יב, ד"ה „ובדין“: „כי לא שייך לומר דאפקעינהו רבנן לקידושין וכן לומר שיש כח ביד ב"ד לעקור דבר מן התורה... כל אלו הטעמים די לאמרם על חז"ל בעלי תלמוד לא על הגאונים שאחר התלמוד ובפרט שלא מצינו לר"ג מ"ה שתקן כן בפירוש באומר שאסורה עליו ואף הר"ש מאיברא במדרכי פרק האומר שאמר שכופין אותו לא אמר רק הבעל שאמר שזינתה אשתו אבל איהי הכחישתו ובוזה אמר דא"כ מיעקר תקנת רגמ"ה שכל אחד יאמר כן“; שו"ת חכם צבי, סי' ג: „אלא דבאינו מאמינה מותרת משום חשש דעיניה נתנה באחר אבל בכאן הרי הבעל צוות ורוצה לגרשה ופשיטא דהיא נאמנת“; פסקי דין רבניים, ב, עמ' 201: „אם היא עצמה אומרת לו שזינתה, י"א שבזמן הזה שיש חדר"ג שלא לגרש אשה בעל כרחא אינו נאמן לומר שמאמינה אולם י"ל דאין זה ענין לנדות דידן. שהרי כל הטעם שאינו נאמן הוא מפני החשש שמא נתן עיניו באחרת. כמו שקיים חשש זה בזמן שהיא אומרת טמאה אני לך. אבל במקרה שהאשה דורשת גט, יש לזון דלא שייך נימוק זה, ואם הוא אומר דמאמין לדבריה שזינתה שוויה עליו חתיכת דאיסורא וחייב להוציאה“

67 בבלי, נדרים, צ ע"ב, ד"ה „חזרו לומר“

68 רשב"א על בבלי, נדרים, צ ע"ב: „וכתבו בתוס' דאשת ישראל שאמרה לבעלה טמאה אני לך ואמר לה בעלה שמאמינה איהו נמי שויה אנפשיה חתיכה דאיסורא ואסירא ליה לעולם, ואפי' אם תחזור היא ואמרה דבאונס הי', אבל אמרו דמשמתין ליה על שגרם שתאסר לו אשתו בהודאתו ועובר על תקנת רבנו גרשום ז"ל“; שו"ת מהרי"ק, סי' קי: „וגדולה מזו כתבו התוס' בשלהי נדרים... דבזמן הזה אם אמרה האשה טמאה אני לך ואומר הבעל שהוא מאמינה שהיא אסורה עליו דהא שויה עליה חתיכה דאיסורא ועל זה כתבו דיש אומרים שהיו מנדין אותו על מה שגרם לבטל תקנת ר"ג שגזר שלא לגרש אשה בעל כרחא... וגם כי יכול הבעל להשמת ולומר שלשם שמים נחקין שאמת הוא שמאמינה ואינו רוצה

לאור הנאמר לעיל, בנוגע למודל המשפטי האפשרי העומד בבסיס הכלל „שוויה” ניתן לומר שטענת הבעל הנתפסת כטענת „שוויה אנפשיה” נדחית משתי סיבות עיקריות:

1. אם נניח שהכלל „שוויה אנפשיה” הוא תוצר של הרחבת מהימנותו של הטוען לתחום האיסורים, הרי שכשם שטענת האישיה „טמאה אני לך” נתפסה בשלב מסוים כלא אמינה, כך גם בנוגע לטענת הבעל קבעו חכמים שיש מקום לחשש „שמא עיניו נתן באחרת.” יותר מכך: גם בשלב בו נתפסה טענת האישיה כאמינה, הרי שאמינות זו היא ההופכת את טענתה מטענת „חבות” לבעל, לטענת „זכות” לבעל. אך כאשר הבעל טוען שאשתו טמאה לו והיא מכחישה, כיצד ניתן לומר שטענתו מהווה זכות עבורה, הרי היא עצמה נושא הטענה והיא מכחישה בכל תוקף טענה זו.

2. אם נניח שתוקף הכלל „שוויה אנפשיה” לא מושפע כלל ממידת המהימנות לה זוכה הטוען, אלא תוצר של הלכות נדרים, הרי שבכל זאת הוא איננו אמור לחול כאשר הוא יוצר חבות לאחרים כגון במקרה הנדון, בו הבעל רוצה לאסור על עצמו את אשתו, כאשר היא איננה חפצה בכך.

לכן, במקרה זה, בו החבות לאישיה נתפסת כמוחלטת, לא יהיה זה ראוי לקבל את טענת הבעל כאשר היא נשענת על הכלל „שוויה” חזרנו, אפוא, למצב של סדר דין פלילי רגיל. הבעל הטוען כלפי אשתו יאלץ להוכיח את טענתו. כל זמן שלא עשה זאת אין סיבה לקבלה. התייחסות זהירה ומורכבת יותר נדרשה במקרה בו האישיה טוענת „טמאה אני לך” והבעל טוען שהוא מאמין לה. לכאורה, אם נתייחס אל טענותיהם כטענה אחת, וטענת הבעל שואבת כוחה מטענת האישיה, הרי שבקביעת בית הדין שאין בטענת האישיה ממש, מאבדת אף טענת הבעל כל משמעות.⁶⁴ ואם נתייחס אל טענות הצדדים בנפרד, הרי כשם

שהוא מותר בה אפי' בעונת תשמיש, כפי משנה אחרונה כו', וזה לא נ"ל, ולעולם אסורה ליה, עד שנותן אמתלאות לדבריו. וחזור ונותן טעם שמחמת כעס דיבר, וכן פסק הרא"ש בתשובה (כלל ל"ב סימן י"ב) והטור הביאו סי' קע"ח, אבל לא להתיר לו להיות אצלה, בלא אמתלא וחרטה, אלא לעשות סיג, אפי' לעבור על דברי תורה, משום תקנת בנות ישראל, ולא כמו שכתב הרשב"א, חקנה זו לא ידעינן ממי קבל, ואינו אלא נביא" שם: „היכא דאיכא חרם דר"ג, מאחר שלא חייבה התורה להאמין לעד אחד ודעתו לסמוך עליו, ואף חכמים לא חייבו לסמוך, אלא ברצון הוא, א"כ יבטל הדבר מלבו, ויאמר כל אדם כוזב, אפי' למרע"ה אין מחויב להאמין, אם לא לשני עדים, ואם הוא סומך עליו מבטל החרם דר"ג, אם הוא רוצה לגרשה, א"כ ישב עמה עד שילבנו ראשם, ויתן לה כסות ומזון, אבל אין כופין לתשמיש, מאחר שלבו נוקפו, ומאמין לו”

64 וראה בהקשר לכך את דברי בעל שו"ת ישכיל עובדי, ב, אה"ע, סי' א, ד"ה „נמצאת”: „ואמנם מנדין אותו שיחזור... שיתן אמתלא לדבריו הראשונים דמה שהאמין הוא מחמת דבריה ועכשיו שחזרה בה גם הוא חוזר... ולדברי יש אומרים דכיון דחזרה בה כופין אותו גם לשמש ואין במה שהאמין בתחי' כלום דאגלאי מלתא למפרע דמעולם לא היתה אסורה ולא חל עליו איסורא כלל וכאמור” וראה גם פסקי דין רבניים, ט, עמ' 74: „ע"כ בעניינו שהבעל רוצה לאסור אשתו עליו על סמך הודאתה לאיסור ובוזה אינה נאמנת אלא שהוא מאמין לה, זה הדין השני שכתבנו לעיל שבוזה אין חולק שאנו אומרים לבעל ממך נפשך, אם אתה מאמינה, האמינה גם במה שמתרת עצמה... וכיון שהאשה אומרת אמתלה טובה מדוע הודתה הרי היא נאמנת לחזור בה, אולם כיון שהבעל הודה שמאמינה ואינו מאמין לאמתלה, יש לעיין אם האמתלה שלה מועילה לעקור שויה נפשיה חתיכה דאיסורא של הבעל... והנה אם נלך בדרך זו הרי בנידון דידן האמתלה היא טובה ומקובלת מאד בעניינו ודברי אמת ניכרים של האשה... ובפרט בנידון דידן שתיכף כשהודתה אמרה האמתלה מיד... ובנידון דידן יש לומר דאף... מועילה האמתלה שלה כיון ששאלנו אותו אם ראה איזה כיעור בה או איזה רגליים לדבר והודה שלא ראה בה דבר רע מעולם והוא מתבסס רק על הודאתה, הרי כשנעקרת הודאתה נעקרו דבריו... על כן בזה

המשך קשר הנישואין, מדוע להטיל עליו חרם – עונש שהשלכותיו חמורות ביותר לאורך תקופות ארוכות בהיסטוריה של הקהילה היהודית.

התשובה לכך נעוצה כנראה, בעובדה שלבעל היתה האפשרות להימנע מניתוק קשר הנישואין: חז"ל, במשנה הנדונה במאמר זה, הסירו את נאמנותה של האישה המרשיעה עצמה. הדרך היחידה שנותרת לה בכדי לאסור עצמה על בעלה היא להפעיל את הכלל – „שוויא אנפשיה“ ורק לשיטת אלו המסבירים אותו כתוצר של נדר, כאמור, ללא קשר לנאמנותה. אך גם במקרה זה, אין היא יכולה לטעון-לנדור ו„לחוב“ את בעלה, אלא אם כן בעלה רואה בכך „זכות“ ולא „חובה“.

הרי שטענתה של האישה הופכת להיות קבילה משפטית רק לאחר שהבעל מקבל על עצמו את השלכותיה. אם היה הבעל מסרב להאמין לאישה ללא הוכחה מצידה, הרי שמצב הדברים היה שונה. במקרה כזה, יכול היה בית הדין לפסוק לבני הזוג שהם מותרים זה לזה. מבחינת בית הדין, האמור לשים לנגד עיניו את אידיאל חוסנו וקיומו של התא המשפחתי הצהרת הבעל על כך שאין הוא מאמין לטענת אשתו כל זמן שלא הוכחו דבריה תהיה הפתרון הטוב ביותר.

לכאורה, חקיקה הקוראת לבתי הדין להטיל חרם על הבעל המסרב להכריז שאין הוא מאמין לאשתו, מלמדת על תפיסה הרואה בבעל המאמין לאשתו מבלי שיש לה הוכחות לטענתה כמי שפועל בניגוד למצופה ממנו על פי אמות מידה מוסריות והלכתיות. מדוע שבית הדין יקבל בהבנה את טענתו-נדרו של הבעל, הפוגעת אנושות בתא המשפחתי? טענת-נדר זו ראויה לגינוי על ידי בית הדין ואכן, החרם משקף גינוי זה. על רקע תפיסה זו ניתן להבין את דברי המהרש"ל:

ו"א דמשמתינן ליה על שגרם שתאסר אשתו עליו, ועובר על חרם תקנת ר"ג ע"כ. ולא ידעתי סברא ברורה להאי מילתא... ונוכל לומר, מאחר שחכמים התירו לו, ואמרו שאינה נאמנת, ואין חששה, אין לו לאסרה, ואם אסרה, הוי כמו שגירשה בע"כ, ועבר חרם דר"ג.⁷⁰

החתם סופר מסביר ביתר הרחבה את תפיסת חז"ל בעניין:

כי הנה אמרו חז"ל האומרת טמאה אני לך תביא רא' לדברי' שמא נתנה עיני' באחר ולא פלוג רבנן בין צדקת וחסודה מ"מ חשו חז"ל ואין הבעל צריך לחוש אם אינו רוצה להאמינה אין אנו אומרים לו אתה ידעת צדקת אשתך ואהבת' לך ואיך תאמר לא אאמין מ"מ אין צריך להאמין כי עמדו חז"ל על קלות דעת הנשים ופריצת הדור... ואין הבעל צריך לחוש אם לא שמאמין באמת ובכ"ז יש סוברי' בזה"ז דאיכא הרגמ"ה שלא לגרש ע"כ מנדין אותו על שמאמין פי' שהי' לו להאמין יותר לדברי חז"ל שאפי' כשרה בנשים אין להאמין בענין זה...⁷¹

החתם סופר מותח ביקורת על התנהלות הבעלים המעדיפים לחשוש לטענת נשותיהם הטוענות „טמאה אני לך“ ולא לחשוש לקביעת חז"ל כי אין האישה נאמנת עד ש„תביא רא'“ לדברי' שמא נתנה עיני' באחר.⁷² גם בנוגע למקרה המסוים שהובא לפניו, בו הצהיר הבעל בשלבים מסוימים על כך שהוא

70 ים של שלמה, יבמות, פרק ב, סי' יח.

71 שו"ת חתם סופר, ג (אה"ע א), סי' עח, ד"ה „ויען חשו“.

מה, "תוספות" עולה שבכל מקרה, אם טענת הבעל מצטרפת לטענת האישה, תהיה האישה אסורה עליו. חוסר ההסכמה בקרב הראשונים נוגע לשאלת ההתייחסות כלפי הבעל לאחר שאסר על עצמו את אשתו. יתכן לומר ששיטת ה"יש אומרים" התובעת להטיל חרם על הבעל, מוסבת רק על המקרה השני הנ"ל, אך מדברי הרשב"א, מהרי"ק, בעל שו"ת בנימין זאב ובעל שו"ת שואל ונשאל עולה שיש לנדות את הבעל, גם כאשר מדובר במקרה הראשון הנ"ל. על-כל-פנים, בעקבות התקנה האוסרת על הבעל לגרש את אשתו בעל כורחה, יהיה מקום לחשוש שטענת הבעל, "טמאה את לי" נובעת מכך ש, נתן עיניו באחרת, אך מכיוון שטענתו מצטרפת לטענת האישה, אין – לשיטת בעלי ה"תוספות" – החשש, נתן עיניו באחרת" יכול להוות בסיס מספיק מוצק בכדי להתיר לבעל את האישה הנתפסת בעיניו כטמאה.⁶⁹

יוצא אם כן שטענת האישה והבעל בעניין טומאתה מתקבלת, ככל הנראה לאור הדגם המשפטי שנבחן לעיל בעניין התייחסות ההלכה לטענת האישה: בשונה מהמקרה בו דחה הבעל את טענת האישה, מקבל הבעל את טענת האישה, במקרה הנדון כאן, על כל המשתמע מכך. לכן טענת האישה לא נחשבת כ"חבות" עבור הבעל אלא כזכות, שהרי בטענתה – האמינה בעיניו – היא מצילה אותו מחיי אסור. במצב זה, יהיה ניתן להבין את טענת האישה רק על רקע ההסבר שהכלל, "שוויה" מבוסס על הלכות נדרים, ולא על רקע הרחבת גדר הנאמנות, שהרי כבר חז"ל במשנה הסירו מכלל הנשים נאמנות זו לתמיד. גם את טענת הבעל, "טמאה את לי" לא ניתן להבין על רקע הרחבת נאמנות לה זוכה הבעל מכך, "הוראת בעל דין כמאה עדים" שהרי הבעל איננו, "בעל הדין" במקרה זה, וכל טענתו נשענת על טענת האישה. הדיון ההלכתי אודות אמינותה של טענת הבעל נוגע אך ורק לשאלת אמינותה של העילה לטענתו, דהיינו, האם הוא באמת מאמין לה או שכל רצונו הוא לגרשה. לכן גם את טענת הבעל, "שוויה אנפשיה" ניתן להבין רק אם נעמיד את הכלל, "שוויה" על בסיס הלכות נדרים.

יתכן ואף סביר להניח, שגם מבחינה מוסרית, מצאו הראשונים טעם נפגם בהתרת בני הזוג זה לזה, על ידי העמדת כל אחד מהם בנפרד, כמי שאינו דובר אמת. סוף סוף, אם רצונם היה לשים קץ לחייהם המשותפים, לא היו נזקקים לשם כך לטענות מסוג זה. יש להניח, אם כן, שעמידתם המשותפת של שני בני זוג לפני בית דין בטענה שהאישה נטמאה לבעלה משקפת, אכן, מצב אומלל אליו נקלעו בני הזוג, והם מבקשים להתמודד עימו במסגרת גבולותיה של ההלכה.

על רקע כל הנאמר לעיל, יש לתמוה על השיטה הסוברת שיש להטיל חרם ונידוי על הבעל המאמין לאשתו. הרי אם מבחינה משפטית יהיה זה נכון שלא לכפות על הבעל את

להיות עמה אפילו הכי היו מנדין אותו על כי גרם לבטל תקנת הגאון, "שו"ת בנימין זאב, סי' רפז, ד"ה "ולע"ד נראה"; ואם הבעל מאמינה שהיא אסורה לו דהא שוויה עליו לחתיכה דאסורא חייב לגרשה וכתבו התוספות ויש אומרים דמשמתינ' ליה על שגרם שתיאסר אשתו עליו ועובר על חרם תקנת ר"ג עכ"ל ותקנת ר"ג הוא שלא לגרש אשה בעל כרחיה וזה בשביל שהאמינה חייב לגרש דאם לא היה מאמינה עליה להביא ראיה... ולפי זה הוא דגרם לגרשה על כרחיה ויש לדון ק"ו אם בזה שיכול לומר לש"ש נתכוונתי בשביל שהאמת הוא שנטמאה ואפ"ה כתבו התוספות אליבא דיש אומרים כדלעיל דמשמתינן ליה על שגרם לבטל תקנת ר"ג מ"ה"; שו"ת שואל ונשאל, ב, אה"ע, סי' מה, ד"ה "וראיתי"; ועוד הוכיח זה מ"ש התוס' דמשמתינן למי שמאמין שביטל חרם ר"ג.

69 מה גם שעל רקע הוראת האישה, "טמאה אני לך" יהיה זה פחות סביר לחשוש שהבעל מאמין לה רק משום ש, נתן עיניו באחרת.

ואכן, גם בעל ציצ אליעזר כותב במפורש „שעל פי דין תורה אין הבעל מחויב להאמינה, וכך יורו לו אם יבוא לשאול על כך“⁷⁵

תפיסתם של האחרונים, כפי שהיא באה כאן לידי ביטוי, מעוגנת היטב ביסודותיו של המשפט העברי בכלל וביסודות העומדים בבסיס שלילתה ודחייתה של טענת „טמאה אני לך“ בפרט. היטיב לתאר זאת אהרן קירשנבאום, בתארו את האידאל הכללי הניצב בפני הדיינים בבואם, ככלל, לדון בענייניו של נאשם:

כללי השפיטה הם לטובת הנאשם, ובדרכים רבות הוקלו דרכי הזיכוי והוכבדו דרכי החיוב. גם בחקירת העדים הוכבדו דרכי חיוב הנאשם... את הנאשם עליו להציל ואת העדים עליו לשפוט, ואכן כך נראה הדבר מכל זווית שהיא... התוצאה: אף כאשר ישתכנע בית הדין באשמת הנאשם, יצא זה זכאי על נקלה בגין הדרישות המופרזות הנחוצות להשגת האמת הפורמאלית.⁷⁶

במה שנוגע למקרה הנדון במאמר זה, הרי שהנאשמת היא האישה עצמה, והבסיס להאשמתה הוא הרשעתה העצמית בלבד. הרי, שבודאי שעל ביד מוטלת החובה להגן עליה, תוך דחיית טענתה שכלל אינה מבוססת כנדרש.

כל האמור לעיל, יכול אמנם להניח את דעתם של דייני בית הדין הן מבחינה משפטית והן מבחינה מוסרית. מערכת המשפט ובתי הדין אינם מתיימרים לחשוף ולגלות את האמת המוחלטת אלא לפסוק על פי אמות מידה וכלים אנושיים, בבחינת „אין לו לדיין אלא מה שעיניו רואות“ ומכיוון שבמקרה בו טוענת האישה טענה השייכת לתחום ההרשעה העצמית, ואף אין בידה להוכיחה, הרי שיש הגיון בכך שהדיינים, כאמור, יבהירו גם לבעל שאין לו להאמין, אלא למה שמחויב הוא להאמין.

אך עדיין יש צורך לברר את התייחסות בית הדין להתמודדותה האישית של אישה שהותרה לבעלה, שכשלעצמו הצהיר שאין הוא מאמין לה, אך עדיין האמת הידועה רק לה – לא נותנת לה מנוח. התייחסות למצב זה ניתן לראות בתשובת בעל מנחת שלמה.⁷⁷ הוא דן בשאלה מדוע לכאורה צריך להיות הבדל בין אישה שכזו לבין אישה שבעלה כופה עליה איסורי דאורייתא מפורשים. בתשובתו מסביר בעל מנחת שלמה שיש לחלק בין המקרים ולהסביר לאישה הטוענת שנטמאה „גם נאמר לה שאם אין את יכולה לעמוד בנסיון קשה זה הרי את גם מותרת לו כי כך היתה תקנת חכמים“⁷⁸ ובהמשך דבריו:

הרי הוא כשותק ושוב אין יכול לומר אני מאמין כיון דמהימן ליה דלאו גולנא הוא. ורבא אמר הכי קאמר אי מהימן לך כבתי זיל אפקה. משום דרבא סבר אשתו זינתה בעד אחד ושחק אין להאמינו. הילכך אם שתק זה הסומא מלמדין אותו שלא להאמינו“

75 ולדברג, שו"ת ציצ אליעזר, ח"ט, סי' לז.

76 קירשנבאום, הרשעה עצמית במשפט העברי, עמ' 92-94.

77 שו"ת מנחת שלמה, תניא (ב-ג), סי' קל.

78 שם: „מה שתמה על מש"כ לדמות לאשה שבעלה אומר לה לבשל בשבת, או בא עליה בע"כ בנדחת... והיא שיודעת האמת צריכה לברוח כדי להנצל מהאיסור, אבל במקרה דידן שהיא נאמנת אלא דיש תקנה במשנה אחרונה דיש כח ביד חכמים לעקור או אפקעניהו רבנן לקדושין, א"כ כמו שהוא מותר כיון שהזנות היה כשהיתה פנויה כך גם היא מותרת וממילא חייבת לשמשתו ולא תהיה כמורדת. כוונתי כמו אם אשה אומרת שהבעל מכריח אותה לעבור על ד"ת צריכים אנו לומר לה דאף שאין אנו מאמינים אותך מ"מ אם את יודעת שכך הוא האמת הרי את חייבת להפסיד הכל ולעבוד את ד' בכל מאורדך ולברוח ממנו אפי' אם לעולם לא יתן לך גט ולא שום דבר אחר, וא"כ גם באומרת טמאה אני... גם נאמר לה שאם אין את יכולה לעמוד בנסיון קשה זה הרי את גם מותרת לו כי כך היתה תקנת חכמים“

מאמין לטענת אשתו, מנסה החתם סופר להמעיט ואף לרוקן מתוכנה את הצהרת הבעל:

יש לומר ב' דברי' או מכח בלבול דעתו וצרתו כמבואר בשאלה לא נתן על לבו שהוא כהן ושתאסר אשתו עליו וא"כ אין לחוש... כשנודע לו שע"ז תיאסר עליו ואיכא למיחשדה שנתנה עיני' בגירושין שוב באמת איננו מאמין לה או אפי' נימא שכ"כ גרם לו בלבול דעתו וידע והבין שאלת בית דין הוא לענין איסור אשתו עליו ואמר שמאמין עכ"פ לא שיש לחשוד כשרה בנושים (דהיינו אשתו) שתתן עיני' באחר אך אח"כ שמע וידע חז"ל חשו לזה שוב גם הוא אינו מאמין לה... נגד חשש חז"ל.⁷²

אפשרות אחת עליה מדבר החתם סופר מעמידה את הבעל כמי שלא היה מודע לרווח הצפוי לאשתו מכך שיכיר ויאמין לטענתה. דהיינו, במקרים רבים, אמון בטענת אדם מסוים, הניתן לאור אינפורמציה חלקית, עלול להפוך לאי-אמון באותו אדם, עקב חשיפה למכלול רחב יותר של פרטים הנוגעים להתנהלותו של אותו אדם. גם במקרה הנדון כאן, יתכן שאם הבעל היה מודע למכלול הרחב של הסיבות לטענה – הרצון לגט, והתוצאות המתבקשות (הפיכת האישה לאסורה על בעלה) – היה מחליף את אמונו בטענת האישה בדרישה מצידו להוכיח את דבריה.

אפשרות נוספת אותה מעלה החתם סופר בכדי לרוקן מתוכנה את הצהרת הבעל, מכוונת לאותם בעלים המודעים היטב לתוצאות הצהרתם. עליהם אומר החתם סופר, שיותר ממה ש„אמונת" הבעל נוגעת לאיננוס או זנות אשתו, היא נוגעת לאמונתו שאשתו לא „נתנה עיניה באחר". גם במקרה כזה, טוען החתם סופר, אם היה נחשף הבעל לקביעת חז"ל שכל אישה חשודה שתתן עיניה באחר, לא היה מטיל ספק בקביעתם של חז"ל, ולא היה מקבל את דבריה ללא שתגבה אותם בהוכחות ברורות.

החתם סופר מסביר – תוך רמיזה ברורה להתנהלות המעשית המתבקשת מהדיינים באשר הם – שאם קודם הצהרת הבעל לפני בית הדין היו מסבירים לו היטב את ההשלכות והמשמעות של הצהרתו ואף נותנים לו להרהר בכך, היה ניתן למנוע בעיות רבות:

הנה כי כן האי גברא שאלו אותו אם מאמין לאשתו ואלו ה' אומרים לו דע שאתה כהן וע"ז תיאסר אשתך עליך האתה מאמין שאינה נותנת עיני' באחר וה' אומר אני מאמין הרי שר' נפשי' חד"א אך הם שאלו אותו סתם האתה מאמין.

כך גם עולה מדברי בעל שוואל ונשאל המניח שהאישה. מעיקר הדין, איננה אסורה לבעלה. לכן הבעל המאמין לאשתו יוכל לגרשה, אך יתכן ויאלץ בשל כך לשאת בעונש של חרם ונידוי.⁷³ לכן, בוודאי שראוי להימנע ממצב בו הבעל מצהיר שהוא מאמין לטענת אשתו. יש ללמד אותו שלא להאמין: „וכן הוכיח שם ה' הנז' מדכתבו הרשב"א ודעמיה שמלמדים אותו שלא יאמין".⁷⁴

72 שם, ד"ה „הנה כי".

73 שו"ת שוואל ונשאל, ב, אה"ע, סי' מה, ד"ה „וראיתי": „ואי דבר זה מדאר' אדרבא מלמדים אותו שיתן אל לבו שיאמין ועוד הוכיח זה ממ"ש התוס' דמשמתין למי שמאמין שביטל חרם ר"ג ואם הוא דאורייתא וכי מפני חרם רבנו גרשום עברין אדאורייתא. ומכ"ז נר' שאינו אלא חומרא שהחמירו מדבריהם".

74 שם. יתכן ובעל שוואל ונשאל מכוון לנאמר בשו"ת הרשב"א, א סי' תתלז, בעניין הנאמנויות: „ואביי מייתי ראי' (קדושין פ"ג דף ס"ו) מההוא סמא דאתא שליח ואמר אשתו זונה. וא"ל מר שמואל אי מהימן לך זיל אפקה. ומפר' אביי אי מהימן לך דלא גולנא הוא. לפי שהסומא מן הדין היה לו להאמינו לפי שהיה שותק כדאמר אביי היא היא. דכיון שהסומא היה מסופק בדבר השליח שהיה בא לשאל עליהם

שעות עם בעלה למורה אחד והתודית וביקשה לסדר לה התשובה והבעל אמר שמאמין לדבריה.⁸²

פסיקת בעל נודע ביהודה למקרה זה היתה שהאישה אסורה על בעלה. בנוגע למסורת המוזכרת מראשוני אשכנז בדבר הנידוי והחרם המוטלים על הבעל שהאמין לאשתו, קובע בעל נודע ביהודה נחרצות:

והא ודאי שאם האשה עדיין עומדת בהודאתה והבעל כבר אמר שמאמין לדבריה פשיטא שאסורה לו ולא שייך הר"ג שהרי היא עדין בהודאתה עומדת ואפי' אם הבעל יאמר עתה שחזור בו ממה שהאמינה והוא חושדה במשקרת הלא אין שום אמתלא למה חזור ממה שכבר האמין לה.

בעל נודע ביהודה צמצם למעשה את חלותו של החרם המוטל על הבעל המאמין לאשתו. לשיטתו, חרם זה איננו אמור לחול כלל כאשר האישה טוענת „טמאה אני לך“ והבעל מאמינה, אלא במקרה בו אמנם האישה טענה כך בתחילה, ואח"כ חזרה מטענתה ונתנה אמתלא לדבריה, ובכל זאת הבעל מאמין לדבריה הראשונים. רק במקרה זה, טוען בעל נודע ביהודה, יחול הנידוי על הבעל.⁸³

בעל ישכיל עבדי ובעל מנחת שלמה מצמצמים עוד יותר את חלותו של הנידוי. לשיטתם, את החרם יש להטיל רק במקרה בו הבעל מתעקש להאמין לטענתה הראשונה של האישה למרות שחזרה בה מדבריה, וגם אז הוא יהיה על תנאי. דהיינו, החרם יחול רק בתנאי שהבעל טוען כך מפני ש„נתן עיניו אחרת“ אם הבעל אכן רואה את אישתו, באמת ובתמים, כאסורה עליו, הרי שהחרם כלל לא יחול.⁸⁴

סיכום ומסקנות

המשנה האחרונה של מסכת נדרים עוסקת, בין היתר, בטענת אשת כהן הטוענת שנטמאה לבעלה ולכן אסורה עליו.⁸⁵ המשנה מתארת שינוי שחל בהתייחסות ההלכה לטענה זו: לאחר

82 שו"ת נודע ביהודה, מהדורה תנינא, אה"ע, סי' יב, ד"ה „אודות השאלה“.

83 וראה דברי בעל נודע ביהודה, שם, ד"ה „ובדין אם“: „ומ"ש רמ"א בס"ק קע"ח שיש אומרים שמנדין אותו על שאומר שמאמינה היינו בחזרה בה ונתנה אמתלא... ומהרי"ק שם כתב בשם התוס' בנדרים ומיהו נראה דאף למשנה אחרונה אם אומרת אשה טמאה אני לך ואמר הבעל שמאמינה דאסורה לו דאיהו שויה אנפשיה חתיכה דאיסורא ואפי' תחזור בה האשה ותאמר באונס היתה וי"א דמשמתינן ליה על שגרם שתאסר אשתו עליו ועובר על חרגמיה עכ"ל התוס'. וא"כ הך וי"א על סוף דבריהם קאי שחזרה בה ואמרה שבאונס היה ולא עוד אלא שאומר אני שאפי' בזה לא אמרו התוס' דמשמתינן אלא בלא אמר שמאמינה עד שחזרה בה ואמרה באונס אבל אם בעודה עומדת בדיבורה אמר שמאמינה ואז בהיתר אמר ולא עבר על חרגמיה ואז אף ששוב חזרה בה איהו אינו מחייב לחזור בו ונשארת באיסורה“.

84 שו"ת ישכיל עבדי, חלק ב, אה"ע, סי' א, „נמצאת“: „והנה גם לדברינו הנ"ל נר' עוד לומר דמ"ש דמנדין אותו, היינו על תנאי אם יש ברוחו רמיה ומרמה בפיו ומלתא דמסתברא היא דלפעמים דדבריו הם כנים ואמתיים... ולמה ננדה אותו על לא חמס בכפו ועוד זאת... דאם יודע לו דחייב נידוי אפשר דיתחזור בו מדבריו הרא' גם אם הם אמת מיראתו מהנדוי... ועי"ז יכשל בביאות אסורות... וע"כ מסתבר דמנדין אותו ע"ת. ואז אין חשש לשום חורבא כמובן“; שו"ת מנחת שלמה, תנינא (ב-ג), סי' קל, ד"ה „פשוט“: „פשוט הוא דאין כופין את הבעל וגם אין מנדין אותו אלא רק לאחר שהאשה חוזרת ואומרת טהורה אני ולא קודם, וגם מה שנוכר נידוי הוא רק על תנאי שאם אמירתו שמאמין רק לדבריה הקודמים הוא מפני שנתן עיניו באחרת שרק אז יהא בנידוי“.

85 כך הובנה המשנה בתלמוד הבבלי, בדין על המשנה.

נלענ"ד דאשה צדקת היודעת בעצמה שתוכל לעמוד בנסיון קשה זה לעזוב את הבעל ולצאת ממנו בלא כלום וגם להתעגן כל הימים ואפי' אם ימות הבעל היא אסורה לכהן מעיקר הדין דשפיר היה ראוי שתעשה כן כי כך כתוב בתורה... אך... מוטב שלא תסמוך על מה שהיא חושבת עכשיו וטוב יותר לסמוך על מה שהתירו חכמים אף אם האמת הוא כדבריה.⁷⁹

בנוגע לשאלה, האם במקרה בו התירו את האישה לבעלה והאמת לא נותנת לה מנוח, מותר לה אף ליזום מצד עצמה קירבה לבעלה – כותב בעל מנחת שלמה:

כמו שאין אומרים לה לעזוב לגמרי את הבית וכדאמרן והיינו מפני שלא כל אשה יכולה לעמוד בזה, הדעת מכרעת לכאורה שהיא מותרת גם להתקרב אל הבעל וצ"ע.⁸⁰

אך ישנם מצבים בהם ברור לכית הדין שאין מנוס מלאסור את האישה על בעלה. על פי רוב, במקרים אלו יש "רגלים לדבר" שאכן בדברי האישה – "טמאה אני לך" – יש אמת.⁸¹ אחד המקרים המפורסמים בהקשר לכך הוזכר פעמים רבות בספרות התשובות ואף גרר התייחסות שונה לחלוטין מהמתואר עד כאן:

שאשה אחת חלתה ובחליה הודית דרך וידי בפני בעלה כי לא טהורה היא ונטמאה כמה פעמים מנער אחד שזינתה עמו גם כאשר חזרה לבריאותה הלכה מהלך שתי

79 שו"ת מנחת שלמה, תניא (ב-ג), סי' קל. וראה דבריו, שם, בהמשך; "שוב התבוננתי (במש"כ לעיל). ועדיין ספק אצלי דאפשר שאם האשה רוצה להתנהג כדין אסור לה למרוד בבעלה ולוותר על הכל אפילו אם זה באמת מפני שאינה רוצה בהפקעה ולעשות כל בעילותיהם זנות, וכן גם להטעם שיש כח ביד חכמים לעקור דבר מן התורה אפילו בקום ועשה ג"כ אינה מותרת למרוד אף אם אומרת שאינה רוצה בעקירת דבר מן התורה כיון שהיא משועבדת לבעל ואין זה עסק שלה כיון שחכמים עקרו" שם.

80 שם.

81 וראה למשל את דברי המהרש"ל, ים של שלמה, יבמות, פרק ב, אות יח: "בשלמא שהאשה אינה נאמנת לאסור עצמה על בעלה, שהתורה לא אסרה אותה על בעלה היכא שלא ידע שנטמאה, אם לא בקינוי וסתירה, וא"כ אפי' את"ל האמת שזינתה, התורה התירה לו, והיא משועבדת לו, וקרקע עולם לפניו, אבל הוא שיוודע בודאי שזינתה, ואסורה לו, ולב יודע מרת נפשו, שלא נתן עינו באחרת, איך נוכל לכפות אותו להיות עמה, ולעשות מעשה באיסור, ועוד, אפי' היכא שהיא אומרת טמאה אני לך, נראה שיכול לומר שומע אני לך, לאסורה עליו, כי לא אמרו חכמים שמא עיניה נתנה באחר, אלא (שלא) לטובתו, ולתקנת הבעל, אבל אם הוא אמר שאי אפשר בתקנה, בזו בודאי שומעין לו, וחרם דר"ג לא עבר, כי לא תיקן על הפרוצות, שמעידין ואומרים נטמאתי, ועיניהם נתנו באחר, פשיטא שזו היא רשעה, ויוצאת מביתו, ואף הפסידה כתובתה!" וראה פסקי דין רבניים, ט, עמ' 82: "לפי זה יש לומר דמתי נחשבת הודאתה הודאה ונפקא מינה שיכול לומר הבעל שהוא סומך על דבריה, היינו דוקא כשבאה להודות שעשתה איסור בכדי שלא תיכשל היא ובעלה באיסור ובדעת מיושבת אומרת כן. אבל בנידון דידן שהודאתה היתה בשעת כעס ומריבה במשטרה מחמת שבעלה אינו מגן על כבודה מפני אחיו, הרי שאין הודאתה בכדי שלא לגרום לאיסור אלא כדי שבעלה יגרשנה וחזר דינה שאין להאמינה בהודאתה, כיון שאין אדם משים עצמו רשע. וכסברה זו כתב בס' עבודת השם סי' כ"ו עיי"ש" ראה גם פסקי דין רבניים, ב, עמוד 204: "ומתוך דברי הח"ס... נראה דגם בדידה באומרת, טמאה אני לך, ואינה רוצה בגירושין אסורה על בעלה הואיל ולא שייך החשש של עיניה נתנה באחר. אף בתשובת ברית אברהם, סי' ע"ד, סובר להלכה בדמקום שאין חשש של עיניה נתנה באחר נאמנת לומר טמאה אני" יש לציין בהקשר לפסק דין זה את חששו והסתייגותו של הרב עובדיה יוסף, אמנם בהקשר למקרה אחר (שו"ת יביע אומר, ב, אה"ע, סי' יב, ד"ה "והנהגה"): "וע' בשו"ת גבעת פניחס... דהכא לא שייך שמא עיניה נתנה באחר, מפני שבקשה מבעלה שלא יגרשנה, זה אינו, שכבר מבואר בכמה תשובות שבכ"ז תליין הכל בעיניה נתנה באחר. שא"כ כל הפרוצות יערימו כן. ע"ש. וכיו"ב כ' גם בשו"ת בני ציון, ר"ס קנד. ע"ש. וע' בנקודות הכסף (י"ד ס"ס קכד)."

ב. יכולתו של אדם לקבוע שדבר מסוים אסור עליו נגזר מהלכות נדרים. גם כאן לא יוכל האוסר לחייב את זולתו.

2. ישנם מצבים בהם בית הדין נוכח שמגמתה של ההרשעה העצמית נובעת ממניעים של חזרה בתשובה ורצון למנוע איסור מהזולת. בחלק ממקרים אלו ובתנאים מסוימים יקבל בית הדין את ההרשעה העצמית על המשתמע מכך.

בדיקת התאמתם של שני הנימוקים האפשריים לכלל „שוויה אנפשיה“ עם שתי פרשנויות הראשונים לתהליך המתואר במשנת „טמאה אני לך“ העלתה שישנו קושי רב ליישב בין התפיסה הרואה בכלל „שוויה אנפשיה“ תוצר של הלכות נדרים לבין משנת „טמאה אני לך“ בגלל החבות הנוצרת לבעל עקב טענתה-נדרה של האישה. לכן, יש להניח שהמודל המתאים למשנתנו הוא זה המבסס את הכלל „שוויה אנפשיה“ על הרחבת גדר הנאמנות לו זכתה האישה בתקופה מסוימת המתוארת בחלקה הראשון של המשנה.

במקביל, במה שנוגע לפרשנויות הראשונים למשנה, העדיפו הפוסקים את התפיסה הפרשנית הטוענת שהיו למעשה שלושה שלבים בהתייחסות ההלכה לטענת האישה.⁸⁷ ואכן, תפיסה פרשנית זו תואמת היטב את המודל המשפטי המתאים למשנה. דהיינו: שינוי גדר הנאמנות לו זכו הנשים בתקופות השונות, הביא לשלושה שלבים בהתייחסות ההלכה לטענת האישה.

העמדת טענת „טמאה אני לך“ כשייכת לתחום ההרשעה העצמית, מבדילה אותה באופן חד ועקרוני מטענת „מאס עלי“ למרות זיקה תוכנית בין השניים, יש לדון בכל אחת מהן, בהתאם לקטגוריה המשפטית אליה היא שייכת, וכאמור, טענת „טמאה אני לך“ שייכת באופן דוגמתי לתחום ההרשעה העצמית על כל המשתמע מכך.

לאור כל האמור, מתבהרת ביתר שאת תפיסת הראשונים והאחרונים בנוגע לטענת הבעל „טמאה את לי“ על מגוון היבטיה. טענה זו של הבעל, כמו גם טענת האישה, אינם נחשבים, עקרונית, קבילים מצד מערכת המשפט. טענת האישה איננה זוכה לאמון מכח קביעתם של חז"ל במשנה עצמה. טענת הבעל איננה קבילה מפני שהדבר היחיד היכול לבססה משפטית הוא הכלל „שוויה אנפשיה“ אך לא כאשר הדבר יצור „חבות“ עבור הזולת. רק כאשר טענת הבעל והאישה מגבות זו את זו יכולות שתיהן להחשב כקבילות משפטית, שהרי הן מבוססות על הכלל „שוויה אנפשיה“ ואין בהן חבות עבור הזולת, שהרי גם הבעל וגם האישה מקבלים על עצמם את השלכות טענת האישה.

למרות זאת, נתפסת טענת הבעל, גם כאשר היא מבוססת על טענת האישה, כלא ראויה בעיני הפוסקים, מכיוון שטענה כזו שואבת כוחה מטענת האישה, וטענת האישה כשלעצמה איננה קבילה מכיוון שהיא בתחום ה„הרשעה העצמית“.

כאמור, קבילותה של טענת הבעל המגובה בטענה מקבילה מצד האישה תגרור פסיקה שתאסור את בני הזוג, אך מלכתחילה ואם אין תימוכין כלשהם לאמיתות טענות בני הזוג – מדגישים הפוסקים שיש לנסות ולמנוע זאת. בסופו של דבר, אם לא ישוכנע הבעל ולא יחזור בו מטענתו, יתכן ויענש על כך שגרם לפירוק התא המשפחתי. פסיקה זו, המוזכרת כבר בכתבי בעלי ה„תוספות“ ועד לספרות הפסיקה בת זמננו, משקפת את המודלים המשפטיים שנבחנו במאמר זה, אך במקביל, גם את כפיפותה של הפסיקה להיבטים המוסריים, הנוגעים לערכים המקודשים של התא המשפחתי היהודי.

87 בגלל הבעייתיות שבפרשנות השניה, המבוססת על הפקעת הקידושין מלכתחילה. וראה בעניין זה לעיל.

תקופה מסוימת, בה קיבלו בתי הדין את טענת האישה וכפו על בעלה לגרשה, נקבע לבסוף להלכה שאין עוד להאמין לטענה זו כל זמן שהיא לא מוכחת כדין, בגלל החשש „שמא עיניה נתנה באחר“

למרות שבדיון התלמודי על המשנה הסיקו האמוראים שמדובר במשנה על אשת כהן הטוענת שנאנסה, לא מצאו הפוסקים סיבה לחלק בין אשת כהן הטוענת, „נאנסתי“ לבין אשת ישראל הטוענת, „זניתי“ ניסוח המשנה – „טמאה אני לך“ – הולם, בהקשר ה„איסורי“ גם את מקרה „אשת כהן שנאנסה“ וגם את מקרה „אשת ישראל שזנתה“⁸⁶ הראשונים עסקו בשאלה כיצד התירו חז"ל, כבר במשנה, את האישה שנקבע בדינה מלכתחילה שהיא אסורה לבעלה. אסכולת ראשונים אחת סברה שאכן חז"ל לא מצאו דרך להתיר את האישה לבעלה, מלבד על ידי הפקעת נישואיה מלכתחילה. דהיינו, לאחר טענת האישה, יכולים חז"ל לקבוע שכל פרק הזמן בו חיה עם בעלה, לא היתה נשואה לו אלא היתה בגדר פנויה. לכן לא היה במעשה טומאתה בכדי לאסור עצמה עליו.

לשיטת אסכולה אחרת, היו שלושה שלבים בהשתלשלות הפסיקה במקרה זה. במשנה מוזכרים רק שני השלבים האחרונים. מלכתחילה לא היה בטענת האישה בכדי לאסור עצמה על בעלה. בתקופה מאוחרת יותר, והיא המוזכרת בתחילת הדיון התנאי, נקבע שיש להאמין לנשים ולקבל דבריהם, ולכן אסרו את הנשים הטוענות „טמאה אני לך“ לבעליהם. בסופו של דבר, חזרו חז"ל לתפיסה ההלכתית המקורית, שלא להאמין עוד לנשים הטוענות טענה זו, ולכן – כפי שהדבר משתקף בסופה של המשנה – התירו שוב את הנשים לבעליהם. הדיון הבתר-תלמודי בספרות הפסיקה והתשובות סביב משנה זו מאופיין בקשירת סוגיה זו של טענת „טמאה אני לך“ עם טענת „מאיס עלי“ וטענת הבעל „טמאה את לי“ עיון בספרות הפסיקה והתשובות בסוגיות אלו, משקף שיטות רבות, עמימות, קשיים ותמיהות רבות.

נדמה שהעמימות והקשיים נובעים בעיקר בגלל הרבדים השונים במשנת „טמאה אני לך“ והפרשנויות השונות לכך בקרב הראשונים, שינוי יחס חכמי ההלכה לטענת „מאיס עלי“ באמצע תקופת הראשונים והחלת התקנה, בתקופת רגמ"ה, האוסרת על גירוש אישה ללא הסכמתה וכתוצאה מכך נסיון להשוות את דין האישה הטוענת „טמאה אני לך“ לדין הבעל הטוען „טמאה את לי“

במאמר זה ישנו ניסיון להעמיד מודל משפטי היכול להבהיר היטב את שני הרבדים במשנה, את מקומם של פרשנויות הראשונים על המשנה, את יחסם השונה של הגאונים וחלק מהראשונים לטענת „טמאה אני לך“ לעומת יחסם לטענת „מאיס עלי“ ואת מגמתם של הפוסקים בעניין טענת הבעל „טמאה את לי“

מודל משפטי זה מבוסס על ההנחה שטענת האישה „טמאה אני לך“ מוגדרת כ„הרשעה עצמית“: ההרשעה העצמית איננה קבילה במשפט העברי, שהרי „אין אדם משים עצמו רשע“ מלבד בדיני ממונות בהם חל הכלל „הודאת בעל דין כמאה עדים“ מאידך, ישנם מקרים בהם מתקבל „הרשעה עצמית“ גם בתחום הדין ה„איסורי“:

1. המשפט העברי מכיר ביכולתו של אדם לאסור על עצמו דברים מסוימים אם נתפס הדבר בעיניו כאסור – „שוויה אנפשיה חתיכה דאיסורא“ יכולת זו תקפה גם כאשר מדובר בהרשעה עצמית. הראשונים מציעים שני נימוקים ליכולתו של אדם לאסור עצמו ואפילו על ידי הרשעה עצמית:
 - א. הדבר נובע מהרחבת הנאמנות של האדם מתחום דיני הממונות לתחום האיסורים, כל זמן שהיא מחייבת אותו בלבד.

בין מטריד לנזק לאופיו של פרק ב' של מסכת בבא בתרא

שלמה א' גליקסברג
אוניברסיטת בר-אילן

Nuisance versus Damage Towards Defining the Legal Character of *Bava Batra* Chapter Two

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This article¹ examines different approaches to a mishnaic chapter that discusses a variety of situations in which an environmental disturbance is described and its distancing is required. Within this chapter there are two cases in which, in the opinion of R. Yossi, the person who is suffering from the disturbance should move away, rather than requiring the perpetrator of the disturbance to remove it. At the beginning of the amoraic period in the Talmud it was stated that the law followed R. Yossi's ruling. When other *amoraim*, a few generations later, discussed another disturbance and decided upon distancing it, they were asked why they had not applied R. Yossi's ruling. The explanation they gave was that R. Yossi himself had agreed that in the case of immediate or direct damage such as that caused by an arrow, distancing was required. Later the *rishonim* tried to define all of the disturbances in the aforementioned chapter as causing immediate or direct damage in order to preserve the validity of the distancing rulings. This article attempts to prove that R. Yossi and the *amoraim* of the first generation were not referring in their ruling to all of the disturbances mentioned in the chapter, but rather to two specific instances they had discussed. This exposition enables us to classify all of the laws in the chapter as pertaining to nuisance rather than damage and maintain the validity of the original laws.

במאמר זה נבקש לדון באחת התמורות המשמעותיות שחלו על פרק שני של מסכת בבא בתרא, כיחידה תלמודית הנתונה ללימוד פרשנות ופסיקה – המעבר ממטרד² לנזק.

1 מאמר זה יסודו בפרק מתוך עבודת ד"ר: איכות הסביבה (אקולוגיה) במשפט העברי: הרחקת מטרידים. העבודה נכתבה בהדרכתו של פרופ' ש"ז הבלין, והוגשה לסנט אוניברסיטת בר-אילן, בשנת תשס"ו.

2 מטרד הוא איננו מונח תלמודי אלא מונח משפטי מודרני. אולם אף על פי כן נראה כי יש בו בכדי לאפיין נאמנה קבוצת הלכות שנשנו בתחילת מסכת בבא בתרא. כשונה מדיני נזיקין שנידונו במהלך

אמנם, מתוך הפרספקטיבה של משניות הפרק, והעובדה שרובן אינן עוסקות בנוזקין אלא במטטרדים, ניתן לפרש את המשנה הנידונה ברוח זו, ולומר שאין הכוונה לנוזקי אש, אלא לחשש מפני בלאי מצטבר כתוצאה מחוסר והכל התנור. כך גם עולה מסוגיית הפתיחה של הפרק: „תא שמע ואת התנור שלשה מן הכליא שהן ארבע מן השפה... קמ"ל הא קמ"ל דהבלא קשי לכותל"⁷ וכפירושו של המיוחס לרגמ"ה שם: „חמימות התנור“ ברוח זו נבקש לפרש משנה נוספת: „מרחיקין את השוכן מן העיר חמשים אמה. לא יעשה אדם שוכן בתוך שלו אלא אם כן יש לו חמשים אמה לכל רוח“⁸ על המרחק אותו נקבה המשנה, מקשה הסוגיה הבבלי: „חמשים אמה ותו לא ורמינהי אין פורסין נשכין ליונים אלא אם כן הרחיק [] מן הישוב שלשים ריס“⁹ על כך מביאה הסוגיה את דברי אביי: „אמ' אביי מישט שיטא טובא וכרסיהו בחמשין אמהאמא מליא ומישט שלשים ריס“¹⁰ כלומר קיים חשש שקרבתו של שוכן היונים לעיר תסכן את תבואת בני העיר, וכפי שפירש זאת המיוחס לרגמ"ה: „כדי שלא יאכלו היונים זרעוני גינות העיר, וכן נמי צריך להעמיד בתוך שלו שיהא לו חמשים אמה כל רוח שלא יאכלו זרעוני חבירו“¹¹

באופן דומה ניתן להבין גם את הדיון שבסוגיית הירושלמי: „הכא את מר נ' אמה ולהלן את מר ל' ריס. אמ' ר' יוסה בר' בון לעניין לרעות רועה היא נ' אמה. לעניין פרוח פורחת אפי' עד ד' מיל“¹² כלומר בדומה לאביי הבבלי, מבחין ר' יוסה בר' בון בין „רועה“ ובין „פורחת“, כאשר המונח „רועה“ ככל הנראה כוונתו לרעות על מנת לחפש מזון.

ואכן, בדברי הראשונים ריטב"א, ר"ן, ונימוקי יוסף מפורש שנוזקי היונים אשר בגינם חייבה המשנה להרחיק את השוכן למרחק של חמשים אמה, הנם בכלל הקטגוריה של נזקי שור, עליה למדנו במשנה א של מסכת בבא קמא.

כללו של דבר, הן מדברי הבבלי והן מדברי הירושלמי, והן מדברי הראשונים, עולה, כי המשנה הנוכרת עוסקת בתקנה האוסרת קרבת שוכן יונים לעיר מגורים מחשש לנוק של ממש.

אמנם, לאור אופיו „המטרדי“ של פרק „לא יחפור“, לא מן הנמנע כי גם משנה זו עוסקת בחשש מיונים כמטטרד ולא בחשש מנזק.¹³ שכן קניון של יונים בסמוך למקום מגורים, עלול להיות מטטרד של ממש, מסיבות של טינוף או העברת מחלות וכיו"ב.

לתלמוד קריית ספר נג (תשל"ח) 256-376; אברהם גרוסמן, חכמי אשכנז הראשונים (ירושלים: מגנס, תשמ"א) 165-174; גרוסמן, חכמי ספרת הראשונים (ירושלים: מגנס, תשמ"ז) 116-121, 221, 427. כך גם עולה מפירושו של רש"י שם, ד"ה אלא אם כן: „כדי שלא יאחז האור בתקרה“ על היחס שבין פירוש רש"י למיוחס לרגמ"ה, ראה: ישראל משה תא-שמע, הספרות הפרשנית לתלמוד (ב' כרכים: ירושלים: מגנס, תשנ"ט) א: 40 (להלן, תא-שמע, הספרות הפרשנית). על החידוש המיוחד של משנה זו על פני יתר דיני נזיקין, ניתן לעמוד מתוך דברי רש"י שבהמשך המשנה, בד"ה ואם הזיק: „... ואעפ"כ מעכבין עליו השכנים להרחיק בכל השיעורים הללו שמא ידליק בתייהם ואין לו לשלם“

7 שם יח ע"א. בכת"י אס'; ר'; א'; כיפ' נוספה המילה: „מרחיקין“ לפני המילים: „ואת התנור“

8 שם ב, ה.

9 שם כג ע"א. בדפוס דר'; דפ': „היה רחוק“ במקום „הרחיק“

10 שם. בנוסח הדפוסים א' וכיפ': „אמה“ במקום „אמהאמא“

11 המיוחס לרגמ"ה שם.

12 תלמוד ירושלמי, בבא בתרא ב, ה יג ע"ג. ר' יוסה בר' בון היה בן דורו של אביי, ראה: יעקב זוסמן, „ושוב לירושלמי נזיקין“ מחקרי תלמוד א (תש"ן) 132-133, הע' 187.

13 על האפשרות שיונים יהיו מטטרד, לא עמד איש מבין המפרשים או החוקרים, אולם על האפשרות שציפורים יהיו מטטרד כבר שמענו מסוגיית הבבלי, בבא בתרא כג ע"א. על דקליו של רב יוסף, שם ביקש לסלק את מקיזי הדם, מכיוון שבגללם התקבצו עורבים, דבר שהיווה עבורו מטטרד של ממש.

ככלל, פרק זה עוסק רובו ככולו בסוגים שונים של מטרידים.³ מתוך משניות הפרק, ישנן שתי משניות אשר נתפסו על ידי התלמודים ומפרשיהם כמשניות נזיקיות לכל דבר ועניין, בדומה לאלו המוכרות לנו ממסכת בבא קמא.

היחס בין ד' אבות נזיקין ומטרידים. בדברינו להלן, נבקש להציג תחילה את שתי המשניות⁴ ואת הפירוש שניתן להן על ידי התלמודים או הראשונים, ולאחר מכן, ננסה להבין על רקע רצף המשניות המרכיבות את אותה יחידה ספרותית, ומתוך אותו הקשר. כך במשנה ב: „לא יעמיד אדם תנור בתוך הבית⁵ אלא אם כן יש לו על גביו גובה ארבע אמות. היה מעמידו בעליה – עד שיחא תחתיו מעזיבה שלשה טפחין, ובכירה – טפח. ואם הזיק משלם מה שהזיק”

את החשש שמפניו דרשה המשנה את הרחקה, הסביר בפירוש המיוחס לרבינו גרשום מאור הגולה (רגמ"ה): „מפני הלהב שלא ידליק לעלייה”⁶ כלומר מדובר בחשש מפני נזק של ממש, כזה שעל פי המפורט במסכת בבא קמא, יש לחייב עליו משום אב הנזק של „אש”

מסכת בבא קמא, במטרידים שלפנינו נזקים לא מדובר בנזקים גופניים או ממונים, אלא רק בכגון אלו המהווים פגיעה באיכות החיים, כגון: זיהום אוויר, רעש, או פגיעה באסטיקה. ראה על כך במאמרי: „מפגעי בעלי חיים: עיון היסטורי והלכתי” שיח השדה 4 (תשס"ז).

3 להלן: פרק „לא יחפור” באופן כללי ניתן לתאר, כי פרק „לא יחפור” על ארבע עשר משניות, מורכב משלושה מוקדי דיון, אשר בכל חלק זירת ההתרחשות שונה. חלק ראשון – משניות א-ו, עוסק במטרידים שנוצרו כתוצאה שכן שתי רשויות, כדוגמת שתי חצרות, או שכנים בשתי קומות. חלק שני – משניות ז-ט, עוסק בפעילויות או כמתקנים המהווים מטריד לעיר. חלק שלישי – משניות יא-יד, מסיים את הפרק במטרידי אילן.

4 משניות המצוטטות בגוף הדברים כבסיס לדיון בהן מועתקות בסתם מכתב יד קויפמן הנחשב לאב טקסט, בציון שינויי הנוסחאות שבשאר עדי הנוסח, במידה והשינויים נמצאו רלוונטיים. סוגיות הבבלי המצוטטות בגוף המחקר, כבסיס לדיון בהן, מועתקות בסתם מכתב יד המבורג, בציון שינויי הנוסחאות שבשאר עדי הנוסח, וכאמור, במידה והשינויים נמצאו רלוונטיים. על מנת לעמוד על שינויי הנוסחאות, הסתייענו במחברותיהם של מכון יד הרב הרצוג, בתקליטור „עדי הנוסח” של המכון לחקר התלמוד ע"ש שאול ליברמן, ובדקדוקי סופרים של ר' נתן נטע רבינוביץ, ירושלים תש"כ. בחירת כתב יד קויפמן וכתב יד המבורג לניסוח הפנים, היא בשל ההסכמה על טיבם המעולה. על טיבו של כתב יד קויפמן למשנה, ראה: יחזקאל קוטשר, „לשון חז"ל” בתוך שאול ליברמן ועמיתיו, עורכים, ספר תנן ילון: קובץ מאמרים (ירושלים: קריית ספר, תשכ"ג) 246-280. על טיבו של כתב יד המבורג, ראה: שמא יהודה פרידמן, „כתבי היד של התלמוד הבבלי: טיפולוגיה של כתיב” מחקרים בלשון העברית ובלשונות היהודים מוגשים לש' מורג (ירושלים: האוניברסיטה העברית תשנ"ו) 163-190 (להלן פרידמן, „כתבי היד”). סוגיות הירושלמי המצוטטות בגוף המחקר כבסיס לדיון בהן מועתקות בסתם מכתב יד סקליגר 3 (Or. 4720) שבספריית האוניברסיטה של ליידן, כפי שהוא מופיע (מהדורת האקדמיה ללשון עברית [ירושלים: האקדמיה ללשון העברית, תשס"א]). על טיבו של כת"ז זה, ראה: יעקב זוסמן, „כתב יד ליידן של הירושלמי לפניו ולאחריה” בר אילן כו-כז (תשנ"ח) 203-220; זוסמן, מבוא לתלמוד הירושלמי מהדורת האקדמיה ללשון עברית (ירושלים: האקדמיה ללשון העברית, תשס"א) ט-מו. לתיאור מהדורה זו, ראה: בנימין אליצור, „מהדורת הירושלמי של המילון ההיסטורי” מדעי היהדות 14 (תשס"ב) 195-210; שלמה נאה, „תלמוד ירושלמי במהדורת האקדמיה ללשון עברית” תרביץ צא (תשס"ב) 569-603.

5 להלן נפרט את רשימת קיצורי כתבי היד אשר נעשה בהם שימוש: דר. דפוס וניציאה רפ"א; אס. אסקוריאל G-I-3; ה. המבורג 19; מ. מינכן 95; פל. פלורנץ Magliabecchi M II.L.9; ר. רומי וטיקן 116; מל. קימברג Add 470.1; מרב. ברלין 568 (I 95); מרל. בר"מ 456; דפ. דפוס פיזרו אוקספורד Opp. Fol. 276; כיפ. פאריס Heb. 1.337; מפ. פרמה 138; מרפ. פרמה ב 3174; מ. מינכן 95; א. אוקספורד 369; ג. קטעי גניזה; גמ. קטעי גניזה – פטרסבורג אנטונין 209; גק. קמברג 175 F2(1); קק. קטעי קרימונה 71; קר. קטעי יונה 48. בכת"ז ה' במקום המילה בית מופיעה המילה: ביתו.

6 המיוחס לרגמ"ה, שם כ ע"ב. על יחס פירוש זה לרגמ"ה ראה: ישראל משה תא-שמע, „פירושי רגמ"ה

יוסי מתיר דווקא בחרדל, ואילו ביתר המקרים, אין הוא חולק כלל ועיקר. אכן, דומה כי ההבחנה בין חרדל לבין יתר המקרים מתקבלת על הדעת, שכן המשרה אכן מזיק לירק, כמו גם הכרישין לבצלים, אולם החרדל אינו מזיק לדבורים, אלא הדבורים הן שמזיקות את עצמן. על ידי שבאות לחצר השכן ואוכלות מהחרדל; כתוצאה מכך נגרם נזק לדבש של בעל הדבורים, וכפי שמבארת זאת הסוגיה להלן: „אמ' רב יהודה אמ' שמואל: בחרדל. במערבא משמיה דר' יוסי בר' לא חרדל מסרסן. אלא מתוך שפיהם חד, חוזרות ואוכלות את דבשן.”¹⁷ גם בסוגיית הירושלמי מבואר שהחשש הוא מפני הנזק שגורמות הדבורים לדבש: „רבי אבהו בשם ר' יוסי בן חנינה. מפני שפי הדבורים חד ומחריבות הדבש.”¹⁸

באופן דומה מסביר הרמב"ם בפירושו למשנה: „אמר להם ר' יוסי חרדל ודבורים הרי כל אחד מהם מזיק את חברו, לפי שכמו שמזיק החרדל לדבורים ומקלקל דבשם ונותן בו חריפות וחדות כך מפסידים הדבורים את החרדל ואוכלין אותו.”¹⁹ הרשב"ם לעומת זאת מסביר שאמנם לדבש לא נגרם נזק אלא: „ומתוך שביעותן בטילות מפריה ורביה וחוזרות ועושות דבש.”²⁰ ההבחנה בין שלוש ההלכות שבמשנה עומדת ביסוד דבריו של הרמב"ן. דברי הרמב"ן מוסבים על שאלת שיעור ההרחקה בכל אחד מהמטרידים המוזכרים במשנה:

תמהני בה למה לא פירש כמה מרחיקין אותן ולא שנו בכולה מתניתין הרחקה סתם חוץ מזאת. ולא מצאתי בתוספתא ולא פירוש כמה היא. אלא שאני רואה מן התוספתא דהרחקת חרדל מן הדבורים חמשים אמה הוא, והרחקת משרה יש ללמדה מנברכת שהיא ד' אמות, וכרישין מן הבצלים אינה כל כך אלא יש ללמדה מדין כלאים ביניקתן. וגם זה תמה שעירבן במשנתנו ולא פירש ולא חלק ביניהם.²¹

אמנם למרות זאת, מהרמב"ן עצמו, וכן מיתר הראשונים, משמע שרבי יוסי חולק על כל המקרים המנויים במשנה, על אף שבדבריו באה לידי ביטוי רק דעתו בעניין חרדל. כך גם נראה מהרמב"ם בפירושו למשנה: „לא שהוא מודה לחכמים שמרחיקין משרה וכרישין, אלא שר' יוסי סובר על הניזק להרחיק את עצמו, ולא ירחיק לא בעל המשרה ולא בעל הכרישין ולא בעל החרדל, לפי שלדעת ר' יוסי כל מי שבא לו הנזק עליו להגן בינו לבין הנזק אם אפשר לו.”²²

כללו של דבר, למרות שמהמשנה כשלעצמה אין כל הכרח בהנחה שרבי יוסי חולק על יותר מפריט אחד – דינו של החרדל, הראשונים הניחו שהוא חולק על כל הפריטים שבמשנה.²³

17 שם פ ע"א. וכפי שמפרש זאת רש"י, שם יח ע"א, ד"ה ואת החרדל: „שאוכלין את החרדל ומחדד את פיהם ואוכלות את דבש שלהם”

18 תלמוד ירושלמי מסכת בבא בתרא פ"ב, ה"י יג ע"ג.

19 רמב"ם, פירוש למשנה, שם ב, י (מהדורת קאפח, עמ' עא-עב).

20 רשב"ם, שם פ ע"א, ד"ה ואוכלות את דובשן.

21 חידושי הרמב"ן, שם כה ע"ב.

22 רמב"ם, שם (מהדורת קאפח, עמ' עא). הסבר שיטת רבי יוסי שבדברי הרמב"ם הוא על פי העמדת הסוגיה הסתמית: „דר' יוסי סבר על הניזק להרחיק את עצמו”

23 ניתן אמנם להניח, וכפי שנראה להלן, כי מפרשים הושפעו מהעובדה שבזמנם כבר התקבלה ההלכה כרבי יוסי, וכדברי רב כהנא שמודה רבי יוסי בגייר דיריה, שיטתו של רבי יוסי נתפסה כמשנה סדורה בענייני שכנים. ולא כמחלוקת מקומית ולגופו של עניין. משכך, ברור אפוא מדוע הם פירשו את דברי רבי יוסי בחרדל כמכוונים לכל המקרים שבמשנה.

כמו כן, לא מן הנמנע שגם את המגמה הפרשנית אותה ניתן לזהות מדברי התלמוד והמפרשים, הנה חלק מאותה מגמה שמתפתחת בהמשך, המבקשת לראות את המשניות כנזיקיות, ועוד נידרש לכך להלן.

לאופיו של פרק „לא יחפור“ לעומת שתי המשניות הנזכרות, לגבי יתר משניות הפרק, לית מאן דפליג שהן ודאי עוסקות בענייני מטרדים, וזהו החידוש הבולט שבפרק. אמנם, עיון ביקורתי בתולדותיו ובקורותיו של הפרק הראה כי חלו תמורות פרשניות בתפיסת הפרק ככזה, עד שמדברי מרבית המפרשים מתקופת הראשונים עולה כי לפנינו פרק העוסק בדיני נזיקין על כל המשתמע מכך.

על מנת לעמוד על שינויים אלו, נבקש לעיין במחלוקת חכמים ורבי יוסי המובאת פעמיים בפרק זה.¹⁴ היות וכפי הנראה, מחלוקת זו הפכה לאבן יסוד ומצע לכל דיון עקרוני ומעשי בנושאים אלו, החל מדיוני האמוראים וכלה בפלפולי האחרונים ובשיעורי ראשי הישיבות.

מחלוקת חכמים ורבי יוסי: היקף המחלוקת. השאלה אותה נבקש להציב בפתח דברינו שלהלן, היא שאלת היקף המחלוקת; האם רבי יוסי המוזכר כחולק פעמיים בלבד בכל משניות הפרק, חלק באופן קטגורי על המתודה המרכזית המאפיינת את תקנות הפרק, או שמא חולק הוא באופן מקומי ולגופו של עניין רק בשני המקומות בהם נזכר. על מנת להשיב על שאלה זו נציע את שני המשניות בהן חולק רבי יוסי.

משנת חרדל

משנה

בתוך שבין המשניות העוסקות בנושא מטרדי עיר (משניות ז-ט) לבין המשניות העוסקות במטרדי אילן (משניות יא-יד), כהמשך למשנת בורסקי נבלות וקברות בסמיכות לעיר, מופיעה המשנה הבאה: „מרחיקין את המישרה מן הירק ומן הכרישים ומן הבצלים ואת החרדל מן הדבורים. רבי יוסה מתיר בחרדל“¹⁵ משנה זו מורכבת משלוש הלכות:

1. הרחקת משרה מן הירק.
2. הרחקת כרישין מן הבצלים.¹⁶
3. הרחקת חרדל מן הדבורים.

באופן פשוט, רבי יוסי חולק רק לגבי ההלכה האחרונה, ומטיל את האחריות כולה על בעל הדבורים. שכן, המשנה ציינה זאת באופן מפורש: „ורבי יוסה מתיר בחרדל“ כלומר רבי

¹⁴ לכירור שיטת רבי יוסי במקורות התלמודיים של פרק „לא יחפור“ כבר הוקדש בעבר מחקר מקיף על ידי משה ווייס: „לשיטת ר' יוסי בהרחקת שכנים“ בר-אילן יב (תשל"ד) 64-107 (להלן, ווייס, „ר' יוסי“). אולם נראה כי עדיין בקעה השאירו לנו להתגדר בה, מלבד הדיון בשיטת רבי יוסי כפי שבאה לידי ביטוי במקורות הבתר-תלמודיים. להשלמת התמונה הזכרנו את דבריו במקומות הרלוונטיים.

¹⁵ בבא בתרא ב, י. בנוסח הדפוסים (וילנא; רינציה; פיזארו): ומרחיקין. לעומת זאת, בכל כתבי היד אין תוספת זו. מטרתה של ר' החיבור היא ליצור חיבור בין ההלכות השונות לכדי משנה אחת, כפי שהיא מופיעה בדפוסים. לתופעה זאת ראה: יעקב נחום אפשטיין, מבוא לנוסח המשנה (כ' כרכים; ירושלים: מגנס, תש"ס) 1050-1076; משה אור, תחביר לשון המשנה (חיפה: אוניברסיטת חיפה, תשנ"ה) 253-264. במרבית כתבי היד והדפוסים: „ר' יוסי“ ולא „רבי יוסה“.

¹⁶ על כרישין, ראה: יהודה פליקס, החקלאות בארץ ישראל בימי המקרא והתלמוד (ירושלים: ראובן מס, תש"ן) 139, 150. הרמב"ם בפירושו למשנה (מהדורת הר"י קאפה [ירושלים: מוסד הרב קוק, תשכ"ה] עמ' עב) מסביר: „אלכראת והוא ממעט חריפות הבצל אם קרוב לו“.

אשר בה לא ניתן טעם לדברי רבי יוסי. נראה אפוא כי בעל הברייתא ביקש להשלים את החסר והוסיף טעם משלו.

גם הסגנון נראה בבלי ומאוחר, ונראה כי הושפע מן הארמית הבבלית, ומכאן מילים כמו דבוראי או חרדלאי.²⁸

לגופו של עניין, הטעם המובא על ידי הברייתא לשיטת רבי יוסי, נראה לגמרי מקומי, והוא שייך דווקא בדבורים וחרדל שרק בהם מתקיים נזק הדדי, ומכאן עד לשלילת הלגיטימיות של טענתו של בעל הדבורים – כי כל אימת שבעל הדבורים מזיק לחרדל, לא מתקבל על הדעת שימשיך לדרוש את הרחקת החרדל.

משנת אילן הסמוך לבור

משנה

משנה נוספת בפרק „לא יחפור” בה מצורפת דעתו של רבי יוסי כחולק, היא משנה יא:

מרחיקין את האילן מן הבור עשרים וחמש אמה והחרוב והשקמה חמשים אמה, בין מלמעלה ובין מן הצד. אם הבור קדם קוצץ ונותן דמים ואם אילן קדם לא יקוצץ. ספק זה קדם וזה קדם לא יקוצץ. רבי יוסה או' אפ' על פי שהבור קדם את האילן לא יקוצץ. זה חופר בתוך שלו וזה נוטע בתוך שלו.²⁹

דעתו של רבי יוסי מסיימת את המשנה, אולם נראה כי היא מהווה חלק אינטגרלי מהמבנה הספרותי של המשנה. לכן נראה, כי לצורך הדיון בדבריו, יש לעיין ביתר חלקי המשנה, ובדרך זו לנסות להסיק על איזה דין בדיוק חולק רבי יוסי.

במקביל לדין משנתנו מביאה התוספתא ברייתא הדומה בחלקה למשנתנו, אך גם שונה ממנה בכמה פרטים משמעותיים. נראה כי ההשוואה בין שני המקורות תוכל לסייע בידינו להבין טוב יותר את תולדותיה והתפתחותה של המשנה כמו גם של ההלכה המקבילה לה בתוספתא.

במשנה ובתוספתא כמה שלבים:

משנה	תוספתא
מרחיקין את האילן מן הבור עשרים וחמש אמה	מרחיקין את האילן מן הבור עשרים וחמש אמה
והחרוב והשקמה חמשים אמה	ובחרוב ובשקמה חמשים אמה

טבלה ממשיכה

28 על כתיב הסיומת ai בארמית הבבלית, ראה: יעקב נחום אפשטיין, דקדוק ארמית בבלי (תל-אביב: דביר, תש"כ) 114. על חדירת הארמית הבבלית לברייתות בתלמוד הבבלי, ראה: פרידמן, תוספתא עתיקתא, עמ' 74-75. אמנם אותה ברייתא מובאת גם בסוגיה להלן בדף כה ע"ב, ושם נוסח הדפוסים „דבוריי” וגם „חרדליי”, וכך היא גם גרסת רש"י בדף יח ע"א, וכן גרסת כל כתבי היד, חוץ מכת"י המבורג: חרדלאי. קשה אם כן לקבוע מהי הגרסה המקורית ומה המאוחרת.

29 בבא בתרא ב, יא. כמה היבטי נוסח: בנוסח הדפוסים ובמרבית כתבי היד, לאחר המילים „והחרוב והשקמה”: „מלמעלה” בין מלמעלה – בכת"י ה'; פל'; מל'; מרפ'; כיפ' נוסף: בין מלמטן או מלמטה. אם הבור קדם – נוסח כת"י אס'; ה'; פל'; כיפ', וכן בנוסח הדפוסים: קדמה. ואם אילן קדם – בכת"י מרב'; מרל': קודם. רבי יוסה – כך גם בכת"י מפ', אולם ביתר כתבי היד והדפוסים: ר' יוסי. שהבור קדם את האילן – בכת"י ה' והדפוסים: קודמת לאילן, וביתר כתבי היד: קדם את האילן.

תוספתא

בתוספתא מובאת הלכה דומה, אלא שלדברי רבי יוסי המתיר בחרדל, נוסף טעם: „... ר' יוסי מתיר בחרדל שאו' לו כדרך שעשית בתוך שלך אף אני עושה בתוך שלי”²⁴. ניתן להניח אפוא, כי הרקע לתוספתא הוא הרצון להשלים את החסר: משראה בעל ההלכה בתוספתא את דברי המשנה²⁵ ובתוכם את דברי רבי יוסי ללא טעם מפורש, מתוך רצון להשלים את החסר הטעים: „שאומר לו כדרך שעשית בתוך שלך אף אני עושה בתוך שלי” כפי שגם נעשה בברייתא הבבליה המקבילה לאותה משנה ותוספתא, וכפי שכלל הנראה נעשה גם בדברי המשנה בעניין אילן הסמוך לבור, וכפי שנראה להלן. כך או אחרת, בקריאה ראשונה, הטעם בתוספתא נראה כטעם עקרוני המלמד על עמדתו של רבי יוסי בענייני שכנים, שבכלל אין חובה על בעל המטרד להרחיק כל זמן שהוא „עושה בתוך שלו”

אמנם אחר העיון נראה שגם על פי התוספתא הנזכרת, רבי יוסי חולק מקומית על חרדל בלבד, אלא שהטעם מנוסח באופן בו ניתן דגש על ההיבט העקרוני. כיצד? דומה כי ניתן לראות זאת בשני אופנים:

1. כפי שכבר הסברנו, שונה דינם של חרדל ודבורים מדינם של יתר המקרים המפורטים במשנה. שכן החרדל שלא כמו המשרה והכרישין אינו מזיק, אלא הדבורים הן שמזיקות. לכן טוען בעל החרדל, כדרך שאתה עשית בתוך שלך פעילות לגיטימית כך אני עושה בתוך שלי כדרכי ואינני מזיק.

2. דגש על שלילת הלגיטימיות של בעל הטענה: כשם שאתה עושה בתוך שלך ומגדל דבורים, ואין אני מחייב אותך בהרחקה, על אף שדבוריך מזיקות את חרדלי, כך גם אני עושה בשלי ומגדל חרדל, לכן אין בסמכותך למנוע ממני זאת.

יש להוסיף על כך, כי בהמשך רציף לאותה הלכה, מביאה התוספתא הלכה נוספת בשם רבי יוסי, ממנה עולה כי רבי יוסי מודה באופן עקרוני למתודה המרכזית של הפרק, שעל המזיק להרחיק את עצמו: „וכן היה ר' יוסי או' מרחיקין את הדבורים מן העיר חמשים אמה כדי שלא ינשכו את בני אדם”²⁶.

ברייטא

בסוגיה הבבליה הפותחת את פרק „לא יחפור” מובאת ברייתא: „ר' יוסי מתיר בחרדל מפני שיכול לומר לו עד שאתה אומ' לי הרחק חרדלך מן דבוראי הרחק דבורך מן חרדלאי שבאות ואוכלות לגלוגי חרדלאי”²⁷.

כמו בתוספתא כך בברייטא זו, דומה כי המקור הקדום יותר והמקורי יותר הוא המשנה,

24 תוספתא, שם (מהדורת הר”ש ליברמן [נוי-יורק]: בית המדרש לרבנים שבאמריקה, תשמ”ח] פרק א, הלכה ט).

25 על היחס ההדדי של התוספתא והמשנה, ראה: מבואו של שמא יהודה פרידמן, תוספתא עתיקתא (רמת-גן: אוניברסיטת בר-אילן, תשס”ג) 95–15 (להלן, פרידמן, תוספתא עתיקתא).

26 תוספתא מסכת בבא בתרא (מהדורת ליברמן, שם).

27 בבא בתרא יח ע”א. בקצרה אציין כמה היבטי נוסח שבמקור זה: דבוראי – בכת”י אס’: דבורי. בכת”י מ’ ור’: מדבוריי. בכת”י פל’; ר’; גמ’: כיפ’: מדבורי. בכת”י גק’: דבוריי. חרדלאי – ההטיות של מילה זו בכתבי היד, דומה לאלו של דבורי, לעומת זאת בכת”י המבורג 165, ובשני קטעי הגניזה (פטרסבורג אנטונין, וקיימברג’ 175) ובדפוסים יש: דבוראי או חרדלאי. על צורת כתיב של שתי יודין לתנועת ai בסוף מילה, ראה: פרידמן, „כתבי היד” 166.

שני רבדים טקסטואליים במשנה. ההנגדה בין המשנה לתוספתא מבליטה הבדל נוסף, שכן כל הדיון במשנה אודות שאלת הקדימות הבור או האילן וכן במצב מסופק, אינו קיים בתוספתא כלל.

זאת ועוד, דברי רבי יוסי שבמשנה נראים שזורים בדיון זה, ומתוך אותו דיון אומר רבי יוסי את דבריו: „ר' יוסי אומר אעפ"י שהבור קודמת...“ ואילו בתוספתא יש: „רבי יוסי מתיר...“

אולם למרות זאת סביר להניח שאין בדברי רבי יוסי התייחסות לדיון של קדימות הבור או האילן, אלא תגובה ישירה לגבי עצם הדין הפותח את המשנה: „מרחיקין את האילן מן הבור“ שכן הנימוק זה חופר בתוך שלו וזה נוטע בתוך שלו, אינו שייך כלל לשאלת הקדימויות.

הקשר לבור שקדם לאילן נראה כשזירה ספרותית של חלק אחד של המשנה באחר,³⁵ שכן לאחר הדיון בקדימות האילן לבור ובמצב של ספק, נותרה המסקנה כי רק באופן בו הבור קדם לאילן הלכה היא שיש לקצוץ, ורבי יוסי הלוא חולק על כך קטגורית, משום כך עורך המשנה הציג זאת באופן זה: „אעפ"י שהבור קודמת לאילן לא יקוצץ“³⁶ לאור הדברים הללו, נראה כי רשאים אנו לשער כי דווקא ההלכה שבתוספתא היא המקורית, ואילו ההוספות שבמשנה שלפנינו מקורם בהוספה מאוחרת יותר.

סעד נוסף למסקנתנו ניתן לראות במשנה דומה: „מרחיקים את האילן מן העיר עשרים וחמש אמה, החרוב והשקמה חמשים אמה. אבא שאול אומ' כל אילן סרק חמשים אמה. אם העיר קדמה קוצץ ואינו נותן דמים ואם האילן קדם קוצץ ונותן דמים; ספק זה קדם וזה קדם קוצץ ואינו נותן דמים“³⁷

בתוספתא מובאת מקבילה למשנה זו, ובה זיהוי של בעל השמועה עם רבי נתן: „ר' נתן אומ' מרחיקין את הכבשונות מן העיר חמשים אמה ואת האילן מן העיר עשרים וחמש אמה“³⁸ אלא שבדומה למשנה שלפנינו, בתוספתא המקבילה לה לא הופיע הדיון כשאלת הקדימויות, כך גם בתוספתא המקבילה למשנת אילן הסמוך לעיר, אין זכר לדיון זה. נראה אפוא, כי הן לפי התוכן הן לפי הסגנון, שתי המשניות נשנו בדורו של רבי נתן, ואילו כל הדיון בקדימות האילן העיר או הבור וכן במצב מסופק, מקורם בהוספה מאוחרת יותר.³⁹ על מנת לשוות לאוסף ההלכות שבמשנה מבנה ספרותי קוהרנטי, נשזרו דברי רבי יוסי בדברי הדיון הקודם.

בדרך זו יתכן ונוכל לעמוד על הקשר בין משניות פרק „לא יחפור“ ובין משנה נוספת: „גיפול הנמצא בתוך חמשים אמה הרי הוא של בעל השוכך; חוץ מחמשים אמה הרי הוא של מוצאו. נמצא בין שני שוככות קרוב לזה שלו קרוב לזה שלו; מחצה על מחצה שניהם יחלוקו“⁴⁰

35 ראה למשל: דוד הנשקה, משנה ראשונה בתלמודם של תנאים אחרונים (רמת-גן: אוניברסיטת בר-אילן, תשנ"ז) 40, 165-166.

36 אכן, לעיל שיערנו כי הטעם המצורף לדברי רבי יוסי מקורו בהוספה מאוחרת, אולם נימקנו את הנחתנו גם ללא טעם זה.

37 בבא בתרא ב, ז.

38 תוספתא מסכת בבא בתרא (מהדורת ליברמן, פרק א, הלכה י).

39 לא מן הנמנע שבמשנת אילן הסמוך לעיר, שמקורה בדברי רבי נתן שבתוספתא, נוספו על ידי העורך שיעורי ההרחקה בחרוב ובשקמה, על פי משנת אילן הסמוך לבור, כפי שגם הפתיח: מרחיקין את האילן מן העיר. נערך מדברי רבי נתן. וכבר הצביע פרידמן על עריכתו הפעילה של רבי עורך המשנה. ראה: פרידמן, תוספתא עתיקתא, 71-74.

40 בבא בתרא ב, ו.

משנה

תוספתא

בין מלמעלה ובין מן הצד

בין מלמעלן ובין מלמטן מן הצדדין

ר' שמעון אר' כשם שמרחיקין
מלמעלה כך מרחיקין מלמטה

אם הבור קדם קוצץ ונותן דמים ואם אילן קדם
לא יקוצץ ספק זה קדם וזה קדם לא יקוצץ

רבי יוסה אר' אפ על פי שהבור קדם את האילן ר' יוסי מתיר שלא ניתנו שדות אלא
לא יקוצץ זה חופר בתוך שלו וזה נוטע בתוך שלו לנטיעה.³⁰

גובה האילן לעומת הבור. מתוך ההשוואה, ניתן לעמוד על כמה נקודות דמיון ושוני בין המשנה לתוספתא: לגבי עצם חיוב ההרחקה של אילן מן הבור למרחק של עשרים וחמש אמה, ובחירוב ושקמה חמישים אמה, שני המקורות נמצאו זהים. אולם לגבי הרכיב השלישי, לפיו דינו של אילן הסמוך לבור חל „בין מלמעלה בין מן הצד“ בתוספתא מצורפת דעתו של התנא רבי שמעון החולק: „רש“א כשם שמרחיקין מלמעלה כך מרחיקין מלמטה“ כלומר מדברי סתם המשנה והתוספתא, נראה שדווקא למעלה ומן הצד ולא למטה, על כך חולק רבי שמעון ומוסיף שכן הדין גם למטה.

כך נראית גם דעתו של התנא שהובא בברייתא שבסוגיה הבבלי: „תנא בין שהבור למטה ואילן למעל' ובין שהבור למעלה ואילן למטה“³¹

אמנם הסוגיה עצמה הביאה את המקור האחרון, על מנת לבאר את המשנה, והיא אף נושאת ונותנת בדברי הברייתא כדי לפרש את המשנה: „בשלמ' בור למטה ואילן למעלה דקא אזלי שרשין ומזקי ליה לבור אלא בור למעלה ואילן למטה אמאי א"ר חנינא בשם ר' יוסי מפני שמחלידין את הקרקע ומלקין קרקעיתה של בור“³² כך גם נראה מפירושו של רש"י על המשנה: „בין מלמעלה – שאחד מהן מלמעלן בגובה שיפוע הר והשני בשיפולו“³³ אולם מתוך ההשוואה לדברי התוספתא, ראינו שזהו תנא שחולק על המשנה, ולא מן הנמנע, שהתנא המובא בברייתא הוא רבי שמעון בעצמו.

אכן, בתוספות מובאת גרסה אחרת למשנה: „ואע"ג דבמתני' נמי תנן בין מלמעלן בין מלמטן“³⁴ אם כן, רשאים אנו לשער שלפני בעלי הסוגיה הייתה מונחת גרסה זו, ומשום כך הם ראו בדברי התנא המובא בברייתא פירוש הולם לדברי המשנה.

30 תוספתא, שם (מהדורת ליברמן, פרק א, הלכה יב).

31 שם כה ע"ב. בכת"י אס': מ'; פל': ר'; א': כיפ': קק', במקום המשפט: „תנא בין שהבור למטה ואילן למעל'“: „בין שהבור למעלה ואין למטה“ ולפי גרסה זו גם המשך המשפט הפוך בהתאם.

32 שם. בגרסה שלפנינו רב, „חנינא“ כך גם בכת"י פל'. בכת"י אס': מ'; א', וכן בדפוס דפ': חנא. בכ"פ: חמא. בכת"י קר': יוחנן, ורק בדו' ודפוס וילנא: חגא.

33 רש"י, שם, ד"ה בין מלמעלה.

34 תוספות, שם, ד"ה תנא. אמנם מרש"י נראה שהייתה לו הגרסה המופיעה בפנינו. על גרסת התלמוד של בעלי התוספות, ראה במבואו של שמא יהודה פרידמן, תלמוד ערוך: פרק השוכר את האומנין, חלק הנוסח (ירושלים וניו-יורק: בית מדרש לרבנים, תשנ"ז) 48-49. על יחסם של בעלי התוספות לשינויי נוסח, ראה: אפרים אלימלך אורבך, בעלי התוספות (ירושלים: מוסד ביאליק, תשמ"ו) 680-688; ישראל משה תא-שמע, „ספרייתם של חכמי אשכנז במאות יא-יב“ קריית ספר ס (תשמ"ה) 298-309; תא-שמע, תוספות הפרשנית, א: 74-75; יעקב שמואל שפיגל, עמודים בתולדות הספר העברי (רמת-גן: אוניברסיטת בר-אילן, תשנ"ו) 116-124.

ניתן להסתייע בכמה ראיות:

1. במשנת עיר קיים מיצוי של כלל האפשרויות; לעומת זאת במשנת בור אין צורך בכולן. נבאר את הדברים בטבלה בת שלוש רובריקות:

המשנה/המקרה	העיר/הבור קדמו	האילן קדם	ספק
משנה ז (עיר)	קוצץ ואינו נותן דמים	קוצץ ונותן דמים	קוצץ ואינו נותן דמים
משנה יא (בור)	קוצץ ונותן דמים	לא יקוצץ	לא יקוצץ

2. על פי ההיגיון יש להניח כי באופן בו העיר קדמה לאילן, על בעל האילן לשאת בתוצאות מכיוון שהוא נטע את אילנו כאשר כבר ידע על קיומה של העיר. לעומת זאת קשה להבין מדוע כאשר הבור קדם, הדין הוא שעל הקוצץ לפצות את בעל האילן.

3. גם השימוש החריג בלשון נקבה לבור, המופיע בחלק מכתבי היד של המשנה, נראה כי מקורו בעקבות העיסוק בעיר שקדמה: „אם העיר קדמה“.

נקודה נוספת המתחדדת מתוך אותה ההשוואה, היא המסקנות ההלכתיות השונות שעלו בכל אחת מן המשניות, על אף שמדובר במקרים דומים. שאלה זו עומדת ביסוד דברי סתם התלמוד בסוגיה הבבליה שעל משנת אילן הסמוך לעיר: „מאי שנא גבי בור דקתני (=אם הבור קדמה לאילן) קוצץ ונותן דמים ומאי שנא הכא דקתני (=אם העיר קדמה לאילן) קוצץ ואינו נותן דמים“⁴³ על מנת לתרץ מביאה הסוגיה מדברי רב כהנא:

אמ' רב כהנא קדרא דבי שותפי לא קרירא ולא חמימא, ומאי קרשיא, דילמ' שאני היזיקא דרבים מהיזיקא דיחיד אלא אי איתמר אסופא איתמר: אם אילן קדם קוצץ ונותן דמים ולימא להו הו לי דמים ברישא והדר איקוצץ. אמ' רב כהנא קדרא דבי שותפי לא חמימא ולא קרירא.⁴⁴

כלומר על פי אותו משפט עממי שבדברי רב כהנא,⁴⁵ מבקשת הסוגיה להעמידנו על הבעיה שנוצרת בגביה מהציבור, ומשום כך פוטרים את נציג הציבור מלכתחילה מלשלם לבעל האילן, כדי לוודא שנציג הציבור לא יחשוש מלקצוץ את האילן, מתוך דאגה שלא יצליח לגייס את הכסף הדרוש לפיצוי בעל האילן.

לאור זאת, דומה כי ניתן לבאר את המשנה באופן הבא, וזאת בדומה ליחס שבין משנה וברייתא בתחילת הפרק. על פי המשנה קיים איסור לפתוח רפת בקר תחת אוצרו של חברו. הברייתא המובאת על ידי הסוגיה הבבליה, מוסיפה: „תנא אם היתה רפת בקר קודמת לאוצר מותר“⁴⁶

43 בבא בתרא כד ע"ב. בכת"י אס'; ר'; ק' במקום המילים „בור דקתני“: „מבור דאמרת“

44 שם. כמה היבטי נוסח: רב כהנא – בכת"י אס': רב הונא. קדרא דבי שותפי – בכת"י פל'; ר': גמ'; קק'; קר' נוסף: היינו דאמרי אינשי. לא חמימא ולא קרירא – בדו'; דפ'; קק'; גמ': לא חיימא ולא קיררא.

45 ביטוי זה מוכר לנו גם מדברי רבא מפרוקיא שבסוגיית עירובין דף ג ע"א. על משמעו של המשפט העממי שבלשון חז"ל, ראה: שמא יהודה פרידמן, „הפתגם ושברו: עיון בתרבות המשל בספרות התלמודית“ JSIJ 2 (2003) 88-25.

46 שם כ ע"ב. ולעיל יח עמוד א בשינוי קל: „דתני עלה: אם היתה רפת בקר קודמת לאוצר – מותר“ יש

משנה זו נשנתה בעקבות משנת שובך הסמוך לעיר, אולם היא חריגה ברצף משניות הפרק, העוסקות כולן ללא יוצא מן הכלל בענייני מטרדים.⁴¹ אכן, המעיין בסגנונה ודאי יבחין בדמיון הרב שבינה ובין הדיון בשאלת הקדימויות שבשתי המשניות שהצגנו. לכן יתכן אפוא כי משנה זו ושתי המשניות האחרות מקורן זהה, והן כולן מאוחרות מיתר המקורות התנאיים שבפרק, ומסיבה זו הן לא נשנו בצד המשניות המקוריות שהובאו בתוספתא.

היחס בין אילן הסמוך לבור ובין אילן הסמוך לעיר: דיון בסוגיית התלמוד. לאחר שזיהינו את הדיון בשאלת הקדימויות בשתי המשניות כרובד מאוחר, שומה עלינו להתמקד במשמעות של כל אחת מהן. אכן, השוואת שני הדיונים מציבה בפנינו כמה שאלות: הראשונה שבהן היא שאלת המקוריות: האם ניתן לזהות את המקור האותנטי והקדום מבין שני המקורות? השאלה השניה היא לגופו של עניין, מדוע המסקנות העולות מתוך שתי המשניות, למרות העובדה שמדובר במקרים דומים, הן הפוכות? לצורך הבהרת הדברים נציג את שני הדיונים הרלוונטיים שבשתי המשניות אלו מול אלו:

משנה ז	משנה יא
מרחיקין את האילן מן העיר עשרים וחמש אמה	מרחיקין את האילן מן הבור עשרים וחמש אמה
ובחרוב ובשקמה חמשים אמה	ובחרוב ובשקמה חמשים אמה
אבא שאול אומר כל אילן סרק חמשים אמה	
אם העיר קדמה קוצץ ואינו נותן דמים	אם הבור קדמה קוצץ ונותן דמים
ואם האילן קדם קוצץ ונותן דמים	ואם אילן קדם לא יקוצץ
ספק זה קדם ספק זה קדם קוצץ ואינו נותן דמים.	ספק זה קדם וספק זה קדם לא יקוצץ
	רבי יוסי אומר אף על פי שהבור קודמת לאילן לא יקוצץ שזה חופר בתוך שלו וזה נוטע בתוך שלו.

ההשוואה בין הדיונים שבשתי המשניות מחדרת בפנינו את ההשערה לפיה הדיון בשאלת הקדימויות שבמשנת אילן הסמוך לעיר, דווקא הוא המוקדם, ואילו הדיון המקביל לו במשנת אילן הסמוך לבור, הנו תוצאה של עיסוק באותן שאלות שנשאלו קודם לכן לגבי אילן הסמוך לעיר.⁴²

41 כבר העיר על כך חנוך אלבק, במבואו למשניות בבא בתרא, בספרו: ששה סדרי משנה (תל-אביב: דביר, תשי"ט) סדר נזיקין, 113.

42 ניתן לצרף סברא נוספת, ולפיה, ככלל יש מקום להניח שהדיון בענייני מטרדי הציבור קדום יותר, היות ומצאנו את דבריו של רבי עקיבא במשנה ט, בעניין הרחקת נבלות קברות ובורסקי מהעיר, לעומת יתר המשניות העוסקות במטרדי יחיד, בהן התנאים המוזכרים במשנה בתוספתא ובברייתות שבתלמודים הם מאוחרים יותר.

שיטת רבי יוסי במשנת אילן הסמוך לבור. כפי שהראנו, רבי יוסי אמר את דבריו ישירות לדברי המשנה, לפיה יש להרחיק את האילן מן הבור. המילים: „אעפ” שזהו קודמת לאילן לא יקוץ” מקורם בעריכה, שמטרתה לשוות לכל חלקי המשנה מבנה ספרותי קוהרנטי. עוד ניתן לומר, כי בדומה למשנת חרדל, שם מסיימת המשנה במילים: „ורבי יוסי מתיר בחרדל”⁵⁰ ואילו הטעמים שנוספו בתוספתא ובברייתא הבבלית, כפי השערתנו, מקורם בהוספה מאוחרת, כך במשנה שלפנינו, יתכן שרבי יוסי סתם את דבריו להיתר, ואילו הטעמים שבמשנה ובתוספתא המקבילה לה, נוספו מאוחר יותר ממניעים שונים. כך או אחרת, אם נתבונן בטעם המצורף לרבי יוסי שבמשנה, בהשקפה ראשונה, הטעם נראה עקרוני: „שזה חופר בתוך שלו וזה נוטע בתוך שלו” אף על פי כן, נראה כי רבי יוסי מיקד את דבריו ישירות למשנת אילן, אלא שהדגיש את העיקרון וההיגיון ולא הסתפק בטעם מקומי.

יתכן והסיבה לכך נעוצה בהנחה שהטעם המצורף לדברי רבי יוסי מקורו בעריכה, בעקבות הדיון בשאלת הקדימויות; היות ועורך המשנה ביקש לשזור את דברי רבי יוסי בדיון הקודם, והדיון הקודם הלא צמצם את תחולת דין המשנה למצב ספציפי, שרק באופן בו הבור קדם לאילן יש לקצוץ את האילן, הציג עורך המשנה את דבריו של רבי יוסי: „אעפ” שהבור קודמת לאילן לא יקוץ” והסיבה היא: „שזה חופר בתוך שלו” כלומר כשם שלאותו בעל הבור שקדימות הבור העניקה לו עדיפות על פני בעל האילן חפר בתוך שלו, כך הלא בעל האילן גם הוא נוטע בשלו.

כאמור, רבי יוסי ככל הנראה חולק בדבריו אלו על משניות אילן וחרדל בלבד ולא על יתר המטרידים המנויים בפרק „לא יחפור”

לאור זאת, יתכן וניתן לבאר דבריו, שבניגוד לדבורים שלגביהם קבע רבי יוסי בתוספתא שיש להרחיקם מן העיר, אילן איננו מטריד⁵¹ כמו יתר המטרידים שבפרק. היות ובעל האילן נוטע בתוך שלו ולא פולש לשטח חבור, יכול הוא לטעון כנגדו, אני הלא פועל בתוך שלי כמוך, ואילו החשש מפני חדירה עתידית של שורשים לכיוון בורך, אינו חשש סביר, ואינו יכול להוות עילה מספקת כדי לשוות למעשה הנטיעה אופי של מטריד.

ואין מקום כלל לטענה של: „וליאם להו הבו לי ברישא דמי והדר איקוץ” אולם כאשר נטעת האילן קדמה לעיר כאן היה מקום לומר, שאמנם צרכי העיר קודמים לצרכיו, אולם יש לפצות אותו על כך ולתת לו את המגיע לו לפני שיקצוץ. מכוח קושיות אלו, מסביר ווייס, „ר’ יוסי” עמ’ 27, את הסוגיה: „שמעיקרא היתה רק הקושיא הראשונה על תשובתו של רב כהנא... לימים העירו בשולי הגליון: „שאני הזיקא דרבים מהזיקא דיחיד” וההערה השתלבה בגוף הטכסט, ומזה התהוותה סוגייתנו וקיבלה צורתה הנוכחית”

50 בבא בתרא ב, י.

51 ראה: תלמוד ירושלמי מסכת בבא בתרא פ”ב ה”ג יג ע”ג: „אמר ר’ יוסי. ויאות אמ’ שאם או’ שרשין עיקר הן לביכורים לא היה אדם יכול להביא ביכורים מעולם. מפני ששרשין שלזה יוצאין לתוך שרשיו שלזה ושלזה בשלזה לפום כן אמ’ ר’ יסא בשם ר’ יוחנן: אין שרשין לעניין ביכורים כלום” מקור זה בא לכאורה לפרש את דברי רבי יוסי המתיר לנטוע אילן בסמוך לבור, ולפיו אין שורשים לעניין מטרידים כלום. אלא שקשה להבין את הקשר שבין הקטע הזה ובין הקטע הקודם לו בירושלמי, אשר ממנו נראה כי הסיבה שמתיר רבי יוסי היא לא מפני ששורשים אינם מטריד ממש, אלא שניתן לסלוח לו על כך, בגלל הצורך שבקיומו של אילן ליישובו של עולם. מדברי המפרשים במקום קשה להבין האם הסוגיה נאמרה ללא קשר לדבריו של רבי יוסי שבמשנה, ורק בגלל הדמיון שבין הנושאים כפי שמשמע מהרדב”ז: „קאי אפ”ק דמס’ ערלה ואגב גררא מייתי הכא כדרך הש”ס הזה” אמנם, בעל הפני חשה מסביר את הקשר שבין דברי ר”י במשנה לדברי הירושלמי שלפנינו.

על פי הברייתא, אם בזמן שפתח בעל האוצר את אוצרו כבר הייתה רפת הבקר מתחתיו כעובדה קיימת, אין לו זכות לטעון כנגד בעל הרפת.

ברור זאת ניתן לומר כי כך גם במשנה שלפנינו; על פי המשנה, אם העיר קדמה לאילן, כלומר משבא בעל האילן לנטוע את אילנו הוא היה מודע לכך שהוא פוגע בעיר קיימת, ברור אם כן שקרצצים את אילנו ללא כל פיצוי, שהרי הוא נהג שלא כדין.

אולם באופן בו בעל האילן קדם לעיר, לכאורה לא היה מקום להטיל את מלוא האחריות על בעל האילן, ולכן מכיוון שדין המשנה מחייב את הרחקת האילן תמיד, היה מקום לפצות אותו על כך. אולם במקרה זה, מכיוון שישנה בעיה של גביית ממון מציבור רחב וקיים חשש סביר שמשום כך ימנעו מלקצוץ האילן, פטור את בני העיר מלשלם מראש לבעל האילן, וכפי שפירש זאת רש"י: „לא חמימא ולא קרירא – שזה סומך על זה אף כאן דמי האילן מי יתנם אם באת להטילם על בני העיר כל אחד אומר ממני לא יתחילו ונמצא האילן עומד והעיר מגונה ואין זה תפארתה של ארץ ישראל“⁴⁷

בהמשך לאותה סוגיה שואלת הגמרא: „ומאי קושיא דילמ' שאני היזיקא דרבים מהיזיקא דיחיד“⁴⁸ כלומר הסוגיה מקשה שהלוא את שאלת הגמרא ניתן היה לתרץ באופן פשוט יותר: נזק לרבים חמור מנזק ליחיד, ומשום כך בעיר, על אף שהאילן קדם לעיר יש לעקור אותו, כדאגה לצורכי רבים, ואילו בבור, היות ומדובר בנזק לאדם פרטי, לבעל הבור, העמידו חכמים את הדין הפשוט שהיה ובעל האילן נטע את אילנו לפני קיומו של הבור, הוא נהג כדין ומשום כך אין לחייב אותו לקצוץ את אילנו.

את המשך הסוגיה נראה כי יש להבין כך: מכוח הקושיה האחרונה לא מסתבר שרב כהנא אמר את דבריו כמענה לקושיית הסוגיה, „מאי שנא גבי בור דקתני קוצץ וכו'“ אלא ככל הנראה דברי רב כהנא נאמרו ישירות למשנה וכדי לתת מענה לקושי אחר במשנה: „אלא אי אתמר דרב כהנא אסיפא אתמר אם האילן קדם קוצץ ונותן דמים ולימא להו הבו לי ברישא והדר איקוץ אר"כ קידרא דבי שותפי לא חמימא ולא קרירא...“⁴⁹

לציין כי המילה „בקר“ בכת"י אס' והדפוסים: ליתא.

47 רש"י שם ד"ה לא חמימא ולא קרירא. על דברי הסוגיה מקשה משה ווייס במאמרו: „ר' יוסי" עמ' 70: „אבל לשון זו אינה הולמת תירוץ זה. היא מצביעה על פטור ממזון דמים ולא על חוסר של גוביינא. מלשון המשנה משמע, שמלכתחילה פטורים בני העיר מלשלם בעוד שמר"כ משמע שבדיעבד אי אפשר לגבות מהם“ אולם לפי הדרך שבארנו את דברי הסוגיה, וכפי שגם עולה מפירוש רש"י, חכמים חזו מראש את הקשיים בגביה, ומחשש שקשיים אלו יגרמו למצב שבו בני העיר לא ירצו לקצוץ את האילן, פטור חכמים את בני העיר מראש מלשלם.

48 ווייס, „ר' יוסי" עמ' 70. בכת"י גמ': „חמימא [דיל'] משום דלא דמי חזקה דרבים מיחזיקה דיחיד, אולם מסתבר שאין מדובר כאן בחזקת, וטעות נפלה בידי המעתיק.

49 ווייס, „ר' יוסי" עמ' 70. על דברי הסוגיה מקשה ווייס שם: המשך: „ומאי קושיא דלמא שאני היזיקא דרבים וכו'“ משונה. סוף סוף אין בהנחה, שאני היזיקא דרבים' אלא תירוץ אחר לקושיא: מ"ש עיר מבור... אבל הלשון, מאי קושיא' משמעו דחייה של קושיא, ולא דחיית תירוץו של ר"כ" אכן, נראה כי יש לתת תשומת לב לכך שסוגיה זו אינה מקשה אחת, אלא ברובה היא סתמית ורק משפט קצר ממנה מקורו בדברי האמורא רב כהנא שהובאו ממקום אחר. שאלת הגמרא מ"ש גבי בור וכו', נשאלה על ידי הסתמא דגמרא, ודברי רב כהנא הובאו כדי לתרץ אותה. אכן, לאחר מכן הגיעה הסוגיה למסקנה, שהיות וניתן להשיב על השאלה באופן פשוט יותר, לכן ברור היה שלא על כך אמר רב כהנא את דבריו, ולכן נותר על הסוגיה, להבין באיזה הקשר אמר רב כהנא את דבריו. גם בנוגע לתירוץ הסוגיה מקשה ווייס, „ר' יוסי" עמ' 17: „דא עקא, גם במשנה יא אותו לשון: קוצץ ונותן דמים' וגם שם מקום לאותה שאלה, אך שם אין בשום אופן מקום לתשובה: קדרא דבי שותפי וכו'“ אולם דומה כי ניתן לתרץ זאת, שבאופן בו בעל האילן נטע את אילנו כאשר הבור כבר היה קיים, הוא נהג שלא כדין

בדברים אלו מנמק הריצב"א את שיטת רבי יוסי כשיטה מקיפה החולקת קטגורית על כל המשניות שבפרק, אולם דומה כי יש להתחשב בעוכדה שהריצב"א אמר את דבריו לאחר שכבר נפסקה ההלכה כרבי יוסי, ואף נקבע שמודה רבי יוסי בגירי ידידה.⁵⁷ סוף דבר, מן המקובץ עולה כי שני המקומות בהם נזכר רבי יוסי כחולק, אין בהם בכדי לקבוע כי רבי יוסי חלק קטגורית על עצם העיקרון שעל בעל המטטר לסלק את מטטר. אלא כפי שעולה מעיון בשתי המשניות על מקבילותיהן, וכן בתלמודים, רבי יוסי חלק מקומית ולגופו של עניין, הא ותו לא.

מקורות תנאיים נוספים

כאמור, דברי רבי יוסי הוזכרו בשתי משניות בלבד, אולם בצדן, כתוספתא הובא בשמו: „וכן היה ר' יוסי או' מרחיקין את הדבורים מן העיר חמשים אמה, כדי שלא ינשכו את בני אדם”⁵⁷ כלומר לגבי גידול דבורים, אין לומר זה עושה בתוך שלו וכו', אלא יש להרחיקם. יש מהראשונים שאמנם ראו בדברי רבי יוסי המצוטטים מקור לעיקרון האמוראי של „מודה רבי יוסי בגיריה ידידה”⁵⁸ ומשום כך מודה בזה רבי יוסי שיש להרחיק דבורים מן העיר.

אולם דווקא בעקבות המסקנה, לפיה רבי יוסי חלק על חכמים מקומית ולגופו של עניין, ניתן להניח, שישנם מטרידים רבים שאותם יש להרחיק, והאחריות המלאה לכך מוטלת על „המזיק” משום כך על בעל הדבורים להרחיק את עצמו, כמו גם על בעליהם של יתר המטרידים המפורטים במשנה.

מקור תנאי נוסף אותו יש לבחון בהקשר לשיטתו של רבי יוסי, הוא מקור תנאי סתמי אשר הובא בסוגיה הבבלי, אגב דיון בנושא השגת גבול במסחר.

תחילת הדיון הוא במימרא של האמורא רב הונא: „האי בר מבואה דאוקי ריחיא ואתא בר מבוא חבירה וקא מוקי גביה דינא הוא דמעכב עילויה דאמר ליה קא פסקת לחיותי”⁵⁹ לאחר מכן מביאה הסוגיה ברייתא בכדי להקשות על רב הונא: „מיתיבי עושה אדם חנות בצד חנותו של חברו ומרחץ בצד מרחצו של חברו ואינו יכול למחות בידו מפני שיכול לומר לו אתה עושה בתוך שלך ואני עושה בתוך שלי”⁶⁰

אלא שלא מן הנמנע, שאין ברייתא זו עוסקת בענייני השגת גבול במסחר או על כללי תחרות כלכליים במבוי, אלא בנושא מטרידים, ומשכך, היא משקפת נאמנה הן בסגנון והן בתוכן את דעתו של רבי יוסי שעל פיו „זה חופר בתוך שלו וזה נוטע בתוך שלו” או כלשון התוספתא: „שאו' לו כדרך שעשית בתוך שלך אף אני עושה בתוך שלי”⁶¹ דומה כי כך יש להבין גם את הברייתא שהובאה על ידי הסוגיה כתירוץ: „תנאי היא דתנאי כופין בני מבואות זה את זה שלא להושיב ביניהן לא חייט ולא בורסקי ולא מלמד

57 תוספתא, בבא בתרא, פרק א (מהדורת ליברמן, עמ' 131). כתוספתא בדפוס ראשון הגרסה היא: „ינטשו” ולא „ינשכו” אולם בכת" ווינה הגרסה היא: „ינשכו” וכך גם בדברי הרמב"ן במלחמות ה', שם, פרק ב: ברשב"א, שם יח ע"ב; בפסקי הרא"ש, שם, סימן כה. בתקופת התלמוד היה הדבש בכלל ודבש הדבורים בפרט הממתיק העיקרי במזונו של האדם. על גידול הדברים בארץ ישראל, ראה למשל: זאב ספראי, „גידול דבורים והפקת דבשן בתקופת המשנה והתלמוד” ישראל עם וארץ ד (תשמ"ז) 221-225.

58 ראה על כך דברינו בסעיף הבא. וראה דבריהם של: הרמב"ן והרשב"א בדף יח ע"ב.
59 שם כא ע"ב. תרגום: בן מבוי אחד שהעמיד ריחיים במבוי ובא בן המבוי חבריו ומעמיד אצלו ריחיים דין הוא שהוא מעכב עליו שאומר לו אתה פוסק את חיותי (= פרנסתי).

60 שם.

61 תוספתא, שם (מהדורת ליברמן, פרק א, הלכה ט).

התוספתא

כפי שציינו בתוספתא המקבילה למשנה: „ר' יוסי מתיר שלא ניתנו שדות אלא לנטיעה”⁵² הטעם שנתווסף לדברי רבי יוסי בתוספתא נראה טעם מקומי שבא להסביר מדוע חולק רבי יוסי דווקא בדין זה.

דומה כי מדברים אלו עולה כי באופן עקרוני יש להרחיק מטרידים, אלא ששונה דינו של אילן, היות ובו מצטרף שיקול מיוחד המטה את הדין כדרכם של שיקולי פסיקה⁵³ ומתוך תפיסה עקרונית ששדות ממהותן נועדו לנטיעה, יש לחרוג משורת הדין ולהתיר לנטוע אילן בסמוך למצר בעל בור השכן.

הירושלמי

דומה כי כך יש לפרש גם את דברי הירושלמי שלפנינו: „ר' יעקב בר אידי בשם ר' יהושע בן לוי. טעמון דרבנין. מפני שיישוב העולם בבורות. שמעון בר ווא אמ' בשם ר' יוחנן. כך משיב ר' יוסי לחכמי. כמה דאית לכון יישוב העולם בבורות אף אנא אית לי יישוב העולם באילנות”⁵⁴

דברי רבי יוסי מתפרשים בירושלמי שלפנינו בדרך דומה לזו שראינו בתוספתא: האילנות כדאיים ביישובו של עולם, ועובדה זו מהווה שיקול ראוי בכדי לחרוג משורת הדין. החידוש הוא דווקא בהסבר שיטת חכמים. דומה כי דברי הירושלמי שלפנינו הנם המקור היחיד שראינו עד כה שמבאר את דברי חכמים. דברי חכמים במשנה זו דומים ליתר המשניות שבפרק, לפיהם יש להרחיק מטרידים. מדברי הירושלמי בשם ר' יעקב בר אידי בשם ר' יהושע בן לוי עולה כי הסיבה שיש להרחיק מטרידים היא הצורך ביישובו של עולם.⁵⁵

אכן, ביסוד דברי הריצב"א שמביא בהגהות מיימוניות, עומדת ההבנה כי התוספתא והירושלמי טעמם זהה. כן עולה מן הריצב"א, כי הטעם שבדברי הירושלמי והתוספתא עולה בקנה אחד עם זה של הבבלי ועם המוסכם להלכה:

עוד אומר ריצב"א דלאו לכל מילי א"ר יוסי על הניזק להרחיק את עצמו אלא בדברים שהן עיקר ישוב או דירה או תשמיש שאין לו למזיק להניח ישובו או דירתו או תשמישו מדתניא בתוספתא ר' יוסי מתיר שלא ניתנו שדות אלא לנטיעה וכן משמע נמי בירושלמי דאמר טעמא דרבנן משום דיישוב העולם בבורות ור' יוסי משיב כמה דאית לכון יישוב בבורות אף אנא אית לי יישוב העולם באילנות, ומשרה וכרישים וחרדל כולן עיקר יישוב ותשמיש הן... אבל אם לא היה מעשה של מזיק עיקר יישוב אפילו ר' יוסי מודה דעל המזיק להרחיק עצמו ע"כ.⁵⁶

52 תוספתא, בבא בתרא (מהדורת ליברמן, פרק א, הלכה יב).

53 על שיקולי יעילות ושיקולי פסיקה בענייני מטרידים ובכלל, ראה: צבי אילני, שיקולי יעילות בטיפול במטרידים אקולוגיים (עבודת מוסמך; רמת-גן: אוניברסיטת בר-אילן, תשמ"ב); אילני, „שיקולי יעילות בטיפול במטרידים אקולוגיים” שנתון המשפט העברי טז-יז (תשנ"ן-תשנ"א) 48-72.

54 תלמוד ירושלמי, בבא בתרא פ"ב ה"ג יג ע"ג.

55 על פי דברים אלו, ניתן היה להבין שורה של חריגות מעיקר הדין, כפי שעולה ממקורות שונים, וכפי שיפורט להלן. שכן אם סיבת ההרחקה היא הצורך ביישובו של עולם, אם כן במקרים בהם ברור הצורך החיוני שבקיומו של אותו מטריד ליישובו של עולם כדוגמת אילן, היה מקום להתיר זאת. אולם הקשר בין המקורות החריגים ובין דברי הפרשנות של הירושלמי לא הוכח דיו.

56 הובא בהגהות מיימוניות, קנין, שכנים פרק י, אות ד.

הפרק, משום כך על מנת להמשיך ולהחזיק בעיקרון המאפשר הרחקתם של מטרדים, יש להניח כי גם על פי שיטתו של רבי יוסי החולק ושההלכה כמותו, יש אופן בו ניתן בכל זאת לחייב את בעל המטרד בהרחקה, על אף שפעל בתוך שלו, כאשר המטרד הוא בבחינת „גירי“ עד והד לעובדה שדברי רב אשי בשם רב כהנא לא נאמרו בהקשר המקומי של משנת אילן, ניתן לראות בסיפור שמביאה הסוגיה, ובו הרקע בו דברי רב אשי נאמרו: „פפי יוכנאה עני והעשיר הוה בנא אפדנא הוה הנהו עצורי בשיבכותיה הוו דייקי שומשמי הוה ניידיא אפדניה. אתא לקמיה דרב אשי אמ' ליה כי הוינן בי רב כהנא הוה אמרין מודה ר' יוסי בגירי“⁶⁸

זיהוי המטרד כגירי או כגירי ידיה⁶⁹, אפשר אפוא לרב אשי לחייב את עוצרי השומשומים בהרחקה, על אף שהם עשו זאת בתוך חצרם.

הפסיקה כרבי יוסי במשנתם של ראשונים: פרשנות והשלכות

הפסיקה כרבי יוסי מחד והרצון לקיים את משניות הפרק מאידך, ובתווך שביניהם ההגבלה של רב כהנא שבמטרדים בעלי אופי של גירי דיליה מודה רבי יוסי שיש להרחיקם, הובילה את המפרשים הבתר-תלמודים לשתי שיטות קוטביות:⁷⁰

שיטת רש"י. הגדרתו של גירי דיליה הוא מעשה הדומה לאדם המזיק בחיצו: „בחסים הבאים לו מיד גופו של בעל הבית ממש“⁷¹ ומכאן, שלא כל המשניות שבפרק הם לפי שיטתו של רבי יוסי, היות ונפסקה ההלכה כרבי יוסי חלק מהמשניות אינן להלכה: „וטובא מילי איכא במתניתין דודאי לאו כרבי יוסי אלא לימא אף זו דסולם ושוכך דלא כרבי יוסי“⁷² על פי שיטת רש"י, לא כל המטרדים שבפרק אכן עונים על הקריטריונים של גירי.

שיטת רבנו חננאל. כל המשניות שבפרק הם על פי שיטתו של רבי יוסי, ומכאן שיש לבאר מהו „גירי דיליה“ שלגביו מודה רבי יוסי שיש להרחיק, ועל פי אותה הגדרה יש להבין כיצד כל המשניות עונות להגדרה זו.⁷³

68. שם. כמה היבטי נוסח: פפי יוכנאה – בכת"י אס' והדפוסים: פאפי יונאה. עני והעשיר – בכת"י ר': עשיר ועני. עצורי – בכת"י אס': עצרי, ובכת"י א': אצרי. הוינן – כך גם בכת"י אס'; א'; כיפ'. בנוסח הדפוסים: הוואן. בכת"י פל': ר'; כיפ' נוסף: ידיה.

69. יתכן שיש לכך קשר לשימוש הרווח של הסוגיות במושגים נזיקים בהקשר של ענייני מטרדים, כפי שמצאנו בכמה סוגיות. כגון: „אמר רב טובי בר מתנא זאת אומרת גרמא בנזיקין אסור“ (כג ע"ב); „אמר רב נחמן אמר רבא בר אבוא אין חזקה לנזיקין“ (שם); „מאן תנא דבנזיקין בתר אומדנא דהשתא אזלינן“ (כז ע"ב).

70. לצורך הבהרות מוצגות שתי השיטות שלא כסדר הכרונולוגי.

71. רש"י, בבא בתרא כב ע"ב, ד"ה בגירי דיליה. כך גם ברש"י להלן כה ע"ב ד"ה בגירי דיליה: „היכא דמטי ליה הזיקא מתוך ידיו של מזיק כההיא דאמר' בהבית והעלייה (ב"מ דף קיז) הנהו בי תרי חד דייר עילאי וחד דייר תתאי איפחית מעזיבה וכל אימת דמשי יריה נפלי עליה דתתאי דכשנופלין מידו ממש על התחתון קרי ליה גירי דיליה וכי פסקי והדר נפלי לא קרי ליה גירי דיליה“ וכך גם בבבא מציעא קיז ע"א, ד"ה אינו והאמר רב אשי וכו'; „הני מילי היכי דלאו אדם עצמו מזיק, כגון אילן ובור, שבשעת נטיעתו אינו מזיק, אלא השרשים גדילין ומתפשטין מאליהן לאחר זמן, אבל היכא דאדם עצמו מזיק וזורק בו חציו, כי הכא ששופך המים על ראשו – מודה הוא דלא גרמא דנזיקין הוא דחיפטר, אלא מזיק ממש הוא, ואדם מועד לעולם, ער וישן, שוגג ומזיד“

72. רש"י, שם, ד"ה לימא מתני דלא כרבי יוסי.

73. „מיכדי מריש פירקין בארחוקי משום הזיקא קא מיירי אמאי לא אמר בחד מיניה דלא כד' יוסי אלא הכא בלחוד. שמעינן מינה, דפירקין כוליה דברי הכל היא, ואפילו ר' יוסי מודה דעל המזיק להרחיק את עצמו, שהני כוליה דתנן מתניתין מרחיקין את הגפת ואת הזבל והמלח והסיד והסלעים והזרעים

תינוקות ולא אחד מבני בעלי אומנויות ולשכנו אינו כופיהו. רבן שמעון בן גמליאל אומר לשכנו כופיהו"⁶²

כלומר לפנינו ברייתא העוסקת אף היא במטרדים שונים, כגון זה של חייט, בורסקי, או מלמד תינוקות, ונחלקו בכך תנאים האם ניתן לכפות רק בעלי מלאכה של מבוי שכן, או גם על תושב המבוי שכבר הוחזק בכך, בדומה לדין משנתנו שגם שם התירו לתושב החצר להרעיש כאשר הוא עוסק במלאכתו לפרנסתו.

כסעד לפרשנות זו, הסתייענו גם בפירושו של בעל התוספתא להלכה זו, שכן בעל התוספתא בפרקנו, בתוך רצף של רשימת מטרדים, ולאחר שהוא עוסק בקדימות של חנות ורפת לאוצר, הוא מביא את הברייתא: „לשכנו אין יכולין לכופו רבן שמעון בן גמליאל אומר לשכנו יכולין לכופו”⁶³

נראה אפוא כי אם צודקים אנו בהבחנתנו, הרי שיש בידינו מקור נוסף אשר מובאת בו דעתו של רבי יוסי, ולא זכה לביטוי על ידי עורך המשנה.⁶⁴

קיימת כמובן אפשרות נוספת, ולפיה הלשון: „מפני שיכול לומר לו אתה עושה בתוך שלך ואני עושה בתוך שלי” שובצה בברייתא הבבליה בעקבות לשונו של רבי יוסי במשנה, אך בהקשר אחר. תופעה זו של שימוש בלשון משנה בברייתות הבבליות נפוצה.⁶⁵

דברי רבי יוסי כמקור למשנה סדורה בענייני הרחקת מטרדים

לאור מסקנתנו, לפיה רבי יוסי אינו חולק על עצם העיקרון של הרחקת מטרדים, אלא דבריו מכוננים לשתי משניות בלבד, דומה כי הפסיקה כרבי יוסי, כפי שהובאה בסוגיה בשם שמואל: „הלכה כרבי יוסי”⁶⁶ אינה גורפת אלא מקומית ונוגעת אף היא לגופו של מקרה. שכן, דברי שמואל הובאו על ידי הסוגיה בהקשר למשנת אילן הסמוך לבור בלבד. נראה כי את המפנה ניתן לזהות בדורו של רב כהנא, דור חמישי של אמוראי בבל, שכן רק ממנו נראה שדברי רבי יוסי הם משנה עקרונית ולא ביקורת מקומית: בהמשך, מביאה הסוגיה את דברי רב כהנא: „אמ' רב אשי כי הוינן בי רב כהנא הוה אמרי' מודה ר' יוסי בגירי”⁶⁷

מדברי רב אשי בשם רב כהנא עולה, כי היות וההלכה כרבי יוסי החולק על כל משניות

62 שם כא ע"ב.

63 תוספתא, שם (מהדורת ליברמן, עמ' 130).

64 אכן יש מקום לתת את הדעת לכך, שההנמקה: „מפני שיכול לומר לו אתה עושה בתוך שלך ואני עושה בתוך שלי” אינה מגוף דברי הברייתא, והיא נוספה מאוחר יותר, על מנת להתאים בינה ובין הדיון המרכזי של הפרק, וכפי שוודאי הבין זאת הרא"ש בתשובתו, וראה בדיון חלק אינטגרלי מדיני הרחקת נזיקין: „שכל ההרחקות השנויות בבבא בתרא (פרק „לא יחפור”) היינו דוקא היכא דדבר הסמוך מזיק לשכנו בגוף ממונו כגון הסומך בורו לשדה חברו שהוא מזיקו להרחיק כשיבוא לסמוך בור גם הוא אומר כל מרא ומרא מרעית לי לארעאי וכן כל ההרחקות דלא יחפור או שמאפיל עליו או מחמת הריח או פסקת לחיותאי” (שו"ת הרא"ש, כלל חמישי, סעיף י)

65 ראה: שמא יהודה פרידמן, „הברייתות בתלמוד הבבלי, ויחסן למקבילותיהן שבתוספתא” בתוך דניאל בויאריק, עורך, עטרה לחיים: מחקרים בספרות התלמודית והרבנית לכבוד פרופ' חיים זלמן דימיטרובסקי (ירושלים: מאגנס, תש"ס) 168-169. וכפי שהדגיש שם בעמ' 169: „תוספת הלשון על פי המשנה שעל אתר (ולפעמים אפילו ממשנה אחרת) היא תכונה שכיחה מאוד בברייתות שבבבלי לעומת מקבילותיהן בתוספתא”

66 בבא בתרא כה ע"ב.

67 שם. היבטי נוסח: הוינן – כך בכל כתבי היד, ואילו גרסת הדפוסים: כי הוואן. בגירי – כך במרבית כתבי היד, ואילו בכת"ר: ר' פל'; כיפ' דר' ודפוס וילנא, הגרסה: בגירי (או גיריה) דידיה. על רב כהנא ודורו, ראה: חנוך אלבק, מבוא לתלמודים (תל-אביב: דביר, תשכ"ט) 314.

1. דעת בעל העיטור היא, שגם רבי יוסי מודה בכל ההרחקות המוזכרות במשניות של פרק „לא יחפור“ מלבד אילן ובור, ואע"פ שחלק מהנזקים אינם „גירי דיליה“ מכל מקום זהו ממון המזיק ומחמת זה יש לחייבו בהרחקה.⁷⁷

2. על המשנה בפרק „לא יחפור“ לפיה יש להרחיק את האילן מהעיר חמישים אמה, אומר הראב"ן, שאע"פ שאין זה נזק של „גירי דיליה“ מכל מקום גם רבי יוסי מודה לדין זה, כיוון שזהו נזק לרבים, וגם הוא מודה שיש להרחיק נזק לרבים אע"פ שאינו נזק של „גירי דיליה“.⁷⁸

ונראה לי מדלא פליג ר' יוסי בכולה מתניתין דלא יחפור אלא באילן ובור לחוד דאמר זה חופר בתוך שלו וזה נוטע בתוך שלו מכלל דבכולה מתניתין מודה דעל המזיק להרחיק... והא דתנן [כה]. מרחיקין את הנבלות וכו' אע"ג דלא ניחא ליה דלזיל (הרוח) [הריח] ול"ה גיריה אפילו הכי לא פליג ר' יוסי עלה משום דהוי היזקא דרבים ומודו ביה דעל המזיק להרחיק את עצמו.⁷⁹

3. על פי שיטת הרא"ש, במקרה של נזק גדול, על אף שאינו בעל אופי של „גירי דיליה“ גם לדעת רבי יוסי על המזיק להרחיק. הואיל והניזק אינו יכול להרחיק את עצמו אלא בטרחה גדולה, והמזיק יכול להרחיק את נזקיו בקלות.⁸⁰ מבואר אפוא, שגם לדעת רבי יוסי נזק של „גירי דיליה“ הוא רק אחת מהסיבות שמחמתן ראוי לשעבד את המזיק בשלו להרחיק את עצמו, וגם כאשר אינו מזיק בדרך של גירי דיליה, מכל מקום תיתכנה סיבות אחרות לשעבד אותו להרחיק: „ואף לרבי יוסי, דאמר (ב"ב כ"ה) על הניזק להרחיק עצמו היכא דלא הוי גירי דיליה, הכא מודה, כיון דנפיש היזקא דשמעון“.⁸¹

4. על פי אחת ממשניות הפרק, אם בנה אדם כותל בחצרו וכעת שכנו גם רוצה לכנות כותל, צריך השכן להרחיק את הכותל שהוא רוצה לבנות ארבע אמות לתוך חצרו. כיוון אנשים ידרכו על הקרקע שבין הכתלים – דוושא, ועל ידי כך זה תתחזק הקרקע, דבר המועיל ליציבות הכתלים.

חלק מן הראשונים ראו את הפגיעה בארבע האמות הסמוכות לכותל כמטרד בעל אופי של גירי דיליה.⁸² לעומתם סבור הר"י מיגש, שלא מדובר במטרד אלא בשעבודי שכנים. על פי שיטתו, דווקא בנזקים יש להבחין בין נזק של „גירי דיליה“ ושאינו „גירי דיליה“ אולם המקרה שלפנינו אינו עוסק בגרימת נזק, אלא שהכונה כותל נחשב כאילו החזיק

77 עיטור, מחאה, אות מ, דבריו הובאו על ידי הרא"ש בתשובותיו כלל קח, סימן י, ובטור סימן קנה.

78 ברוח זאת פסקו פוסקי זמננו: בשו"ת חלקת יעקב חלק א, סימן קעה, אות ד, ובשו"ת אהלה של תורה, חלק א, סימן פט, אות ד, שהמזיק צריך להרחיק את עצמו במקרה של נזק לרבים אע"פ שאינו גירי דיליה.

79 ראב"ן, חלק א, סימן א.

80 וכן פסק השו"ע סימן קנה, סעיף כ. אמנם הפרישה, שם, סעיף קטן כא, ובאר הגולה, שם, סעיף קטן ב, אומרים ששם מדובר בנזק של גירי דיליה. ואמנם הרא"ש בתוך דבריו אומר שזהו נזק של גירי דיליה, אולם מבואר בדבריו שמלבד זה היה ראוי לחייב את המזיק להרחיק את עצמו אפילו אם זה לא היה גירי דיליה כיוון שזהו נזק מרובה שהניזק לא יכול לסלק את עצמו בקלות ממנו, וכן כתב בספר נתיבות המשפט, סימן קנה, סעיף קטן ג.

81 שו"ת הרא"ש, כלל קח, סימן י.

82 פירוש רב שריא לבבא בתרא, נדפס בתשובות הגאונים (מהדורת ש' אסף [ירושלים: דרום (דפוס הספר), תרפ"ט] עמ' 200): רבינו חננאל, שיטה מקובצת הנר, שם כג ע"א; תוספות, שם כג ע"ב, ד"ה לימא; פסקי הרא"ש, שם, סימן טו.

משום כך על מנת לקיים להלכה את כל המשניות, כשיטת רבי יוסי שהלכה כמותו המורה שבגירי דיליה אכן על המזיק להרחיק את עצמו, בקשו כמה ראשונים להסביר כיצד הן אכן עונות להגדרה של גירי דיליה. הרושם המתקבל הוא שההגדרה הנוזקית של המונח גירי דיליה התעדרה מעט, ואילו המטרדים שבפרק קבלו משמעות נזיקית יותר. זיהוי המטרדים שבפרק כגירי דיליה פותח בפנינו פתח בכדי להבין דברי כמה מהמפרשים מתקופת הראשונים ואילך, שראו את מטרדי הפרק כדיני נזיקין.

כך בדברי בעל העיטור הרואה במטרדים כמו מי בור גפת וזבל, כממונו המזיק את כורו וכותלו של חברו.⁷⁴ כך גם כותב הרמ"ה אבולעפיה, שדיני הרחקת נזיקין הם משום איסור מזיק: „ודאסור למגרם מידי דאמי מיניה היזיקא לאינשי, אי משום לפני עור לא תתן מכשול ואי משום ואהבת לרעך כמוך“.⁷⁵

כך גם כותב הגר"א, בדעת הרמב"ם, שדיני הרחקת נזיקין הם מן התורה משום האיסור להזיק: „וטעמו של הרמב"ם כיון דמן התורה נזיקין אסור אזלי לחומרא משא"כ להרחיק אחי"כ... אבל הרא"ש סובר אע"ג שהוא דאורייתא כיון דמילי דממונא אזלי לקולא...“⁷⁶

שיטת רבי יוסי: מגמות פרשניות של הרחבה וצמצום

בשני הסעיפים האחרונים, ראינו כיצד הורחבה תחולת דינו של רבי יוסי מביקורת מקומית בעניין חרדל ואילן, למשנה סדורה ומקיפה בענייני שכנים, וכפי שהראנו, מגמה זו החלה בדברי אמוראים והמשיכה וקיבלה דגשים בדברי המפרשים מתקופת הראשונים.

המשך העיון במשנתם של הראשונים, הראה כי לאחר שהתבססה ההלכה כרבי יוסי בהלכות הרחקת נזיקין, הוציאו הראשונים מן הכלל שורה של הלכות שלידם לגביהם ודאי לא אמר רבי יוסי את דבריו, ובהם הוא יודה שיש להרחיקם על אף שאין בהם את הקריטריונים של גירי דיליה.

ריבוי המקרים היוצאים מן הכלל יש בו בכדי ללמד על הקושי הגדול של הצורך לקבל את פסיקתו של רב יהודה משמו של שמואל שהלכה כרבי יוסי, ובין הרצון לראות את משניות הפרק כולן כמחייבות הלכה למעשה. חוסר ההתאמה הבסיסי שבין השניים, הוליד שורה של קונסטרוקציות חריגות, ולהלן כמה מהן:

והמחרישה ומימי רגלים והרחים והתנור והכירה וחנוט של נחתומין וכיוצא בו, וכו' ונלך נגד כותל ונרחק חלונות משום היזק ראייה ומשום איפול, ואפילו ריש פירקא כרבא, דאוקמא בטוען כל מרה ומרה דקא חפרת קא מרעת לי לאשיתאי, הני כולהי גיריה ניהור דמההוא שעתא משתכח [היזק] יתה, ואמר רב כהנא מודה ר' יוסי בגיריה, ולא פליג אלא באילן דבעידנא [דנטע לי] תנהי שרשין דמוקי? (רבנו חננאל מכתב-יד מהגניזה, בתוך: יקותיאל כהן, רבנו חננאל ובית מדרשו [ירושלים: מכון אמרי דוד, תשנ"א] עמ' קה).

74 ראה: שו"ת הרא"ש, כלל קח, סימן י.

75 יד רמ"ה, בבא בתרא כו ע"א.

76 ביאור הגר"א, חושן משפט, סימן קנה, סעיף קטן ח. יתכן וברוח זאת ניתן להבין גם את דברי הראשונים שזיהו כמה מטרדים מתוך הפרק כאחד מארבע אבות נזיקין כדוגמת הרמב"ן שדן מדוע אין לחייב בשורשי האילן שמזיקים לבור, מדין שורר או משום אש. כמו כן הוא דן לגבי גפת, לחייבו מדין ממנו שהזיק, ראה רמב"ן, סוף קונטרס דינא דגרמי, וראה על כך באורך ובעומק: ברכת שמואל, חלק ד, סימן יד, אות ב; שם, סימן יט, אות ב ואילך. כך גם את הרמב"ן במלחמות ה' שכתב שהסיבה שלפיה אין לחייב את בעל השוכך מדין „אש" היא אך ורק מכיוון שהן כינוי שוכך שאין קניינן אלא מפני דרכי שלום, ראה: הרמב"ן, מלחמות ה', בדפי הרי"ף דפוס וילנא, דף ט ע"ב. וכך גם בעל העיטור לפיו יש לחייב את בעל הגפת מדין אשו משום ממנו. ראה: העיטור, מחאה, אות מ, הובאו דבריו בשו"ת הרא"ש, כלל קח, סימן י, ובטור, חושן משפט, סימן קנה.

האם מלאך המוות ממית את החכמים? לגישתם המיוחדת של הסתמאים

בעז שפיגל
אוניברסיטת בר-אילן

Does the Angel of Death Kill Torah Scholars?

The Approach of the *Stammaim*

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Our study shows two approaches of talmudic literature to the question of whether the Angel of Death is the one who takes the life of Torah scholars. The earlier, more original approach posits that the scholar was not under the jurisdiction of the Angel of Death. Such an approach can be found in the *midreshei halakhah* and also found, both explicitly and implicitly, in the Talmud of the Land of Israel and in *midreshei aggadah*, all composed in the Land of Israel. This early position was preserved as well in the Babylonian Talmud, both in tannaitic and amoraic sources, but only in the sections that have clear attributions. However, in the non-attributed, stammitic sections, one finds witness to a different approach. According to the *stam* of the *Bavli* the Angel of Death is personally responsible for the death of scholars. We try to prove that the new position, as found especially in the stories of the stammitic sections of the *Bavli*, is late and post-amoraic. At the end of our research, we offer an explanation for the new stammitic approach based upon the studies of Jeffrey Rubenstein and Yaakov Elman.

„מלאך המוות“ כמלאך הממונה על המתת הבריות ובכללם ישראל, נזכר לא אחת בספרות חז“ל.¹ ידיעות שונות עליו ועל פעילותו נשתמרו בספרות זו, וגם לא מעט סיפורים על מפגשיו ועימותיו עם חכמי התלמוד ועם דמויות מקראיות. חוקרי אגדה ופולקלור כבר עסקו בדמותו של מלאך המוות, וטיפלו בסיפורים הללו ובמקבציהם, ובעשור הקודם אף נעשתה דיסרטציה אחת על מלאך זה.² אבל, עדיין נשאר מה לחשוף ולגלות באגדות השונות על-אודותיו, דוגמת אשר נציע במחקרנו זה.

1 זאת בניגוד למקרא, אשר לא מכיר בקיומו של מלאך זה, ואשר לפי תפיסתו, המתת הבריות איננה פעולה המסורה דרך קבע למלאכים אלא לאלוהים. ואמנם, פעם אחת נזכר במקרא מונח המחבר מלאך עם מות, והוא במשלי טז, יד: חמת מלך מלאכי מות ואיש חכם יכפרנה. אבל, בצירוף זה לא נאמר „מלאך המות“ אלא „מלאכי מות“ וגם אין לייחס מונח זה למלאכי שמים, אלא לשליחי מלך בשר ודם. לדיון במקורות המקראיים ועל העניין כולו, ראה בקצרה: Dov Noy, „Angel Of Death,” *EncJud* (1971) 2:147-50 (2nd ed., 2007) 2:952-53 (להלן: נוי, „מלאך המוות“). ובהרחבה, ראה: Peter A. Cohen, „A Motif-Index of the Angel of Death in Early Rabbinic Literature” (Ph.D. diss.; Tallahassee: Florida State Univ., 1993) 35-77, and his summary, 75-77 (להלן: כהן, „מוטיב-אינדקס“).

2 על מלאך המוות בספרות חז“ל, ראה בקצרה: נוי, „מלאך המוות“; ישראל תא שמע, „מלאך המוות“

שבמרחק ארבע אמות ממנו לא יבנו כותל. שעבודי השכנים זה לזה כוללים אפוא גם את העיקרון שהבונה כותל נחשב כמחזיק במרחק הדרוש לחיזוק הכותל.

סיכום

במאמר זה ביקשנו לדרון באחת התמורות המשמעותיות שחלו על פרק „לא יחפור“ המעבר ממטרד לנזק. ככלל, פרק זה עוסק רובו ככולו בענייני מטרדים. אולם ישנן שתי משניות אשר נתפסו על ידי התלמודים ומפרשיהם כמשניות נזיקיות לכל דבר ועניין. מתוך הפרספקטיבה של כלל משניות הפרק, ביקשנו לפרש גם את שתי המשניות הללו, ומתוך ההקשר חיפשנו להן הסבר מטרדי.

בסעיפים שלאחר מכן, ביקשנו למקד את תשומת הלב בשתי משניות מפרק „לא יחפור“ על מקבילותיהן השונות. עיון בשיטתו של רבי יוסי בשני המקורות שהבאנו העלה כי אין בדברי רבי יוסי בכדי לשרטט משנה סדורה החולקת קטגורית על המתודה המרכזית של פרק זה מול עמדתם של חכמים, אלא רק מחלוקת עניינית מקומית לגבי שני מטרדים: חרדל הסמוך לדבורים, ואילן הסמוך לבור. הנימוקים המצורפים לשיטת רבי יוסי בחלק מן המקורות, מהם נראה כאילו רבי יוסי חולק על כל המשניות, ככל הנראה, מקורם בהוספה מאוחרת, מתוך רצון להדגיש את העיקרון, אם משיקולי עריכה שונים, אם מתוך רצון להבין את ההיגיון שמבעד לפני דברים.

מקור תנאי נוסף אשר ביקשנו לבחון בהקשר לשיטתו של רבי יוסי, הוא מקור תנאי סתמי אשר הובא בסוגיה הבבליה, אגב דיון בנושא השגת גבול במסחר. במקור זה, נימק אותו תנא את שיטתו, אשר לפיה ניתן להפעיל חנות או בית מרחץ בנוסף לאלו שקיימים מכבר, חברו אינו יכול אפוא למחות בידו: „מפני שיכול לומר לו אתה עושה בתוך שלך ואני עושה בתוך שלי“ האם יש בדברים אלו ביטוי לשיטתו של רבי יוסי, או שמא לא מדובר אלא בשימוש של הבריייתא הבבליה בלשונו של רבי יוסי במשנה, אך בהקשר אחר. בדורו של שמואל נפסקה ההלכה כרבי יוסי, כפי שהעיד על כך תלמידו רב יהודה, אולם אין בפסיקה זו כדי ללמד משהו על פסיקה גורפת כנגד העולה ממרבית משניות הפרק. נראה כי היות ודברי שמואל נאמרו ישירות למשנת אילן הסמוך לבור, הפסיקה היא לגמרי מקומית, הא ותו לא.

את שינוי המגמה ואת המפנה יש לזהות עם דברי רב כהנא, או לפחות בדברי תלמידו רב אשי, שקבע כי מודה רבי יוסי בגירי ידידה, כאשר דברי רב אשי במקורם לא נאמרו ישירות למשנה הנזכרת, אלא הם נאמרו ביחס למקרה אחר, ורק הושאלו לסוגיה זו אגב דברי שמואל.

מכאן ולהלן, ביקשו חלק מהראשונים להראות כיצד כל משניות הפרק, או לפחות מרביתן, עונות על הקריטריונים של גירי ידידה, וזהו ככל הנראה הרקע לכך שמשניות הפרק קיבלו אופי נזיקי יותר מהאופי המטרדי שאפיין אותן במקורן.

אכן, הקושי להחיל את העיקרון של גירי ידידה על כל משניות הפרק מכאן, והרצון לקיימן להלכה ולמעשה וכשיטת רבי יוסי שהלכה כמותו, הביא שורה של ראשונים ליצור כללים נוספים אשר לפיהם העיקרון של גירי ידידה הוא אינו העיקרון הכלעדי שבכוחו להשאיר את המשניות במסגרת ההלכה, וכי קיימים עקרונות נוספים, ומכאן שגם משניות שאינן עונות על ההגדרה של גירי, גם הן יכולות להתקבל להלכה ולמעשה.

ההלכה – מכילתא דר"י, ספרי דברים ומדרש תנאים לדברים.⁵ עם זאת, מן הקבצים הנזכרים, וגם ומן האחרים, משתקפת ומתקבלת תמונה ברורה ואחידה.

1. ראשית, יש לתת את הדעת לעובדה שמדרשי ההלכה ערים לקיומו של מלאך המוות, והם מייחסים לו את פעולת ההמתה גם בקרב עם ישראל.⁶ עם זאת, אין בהם ולו סיפור אחד על מישהו מן החכמים או מגדולי האומה שהומת על ידי מלאך זה. אדרבה, בשני סיפורי פטירה מפורטים, מות אהרן ומות בניו נרב ואביהוא, אין כל אזכור למלאך המוות, וברור מתכני הסיפורים שלא היה לו כל חלק בפטירתם.⁷

5 על המכילתא ראה בהערה הבאה, ועל הספרי ומדרש תנאים ראה להלן בפנים. יש לציין, כי במשנה ובתוספתא אין כל אזכור למלאך המוות. העדר מוחלט זה עולה בקנה אחד עם העובדה שאין במשנה ובתוספתא כל התמודדות עם שאלות הקשורות באירוע המוות, בטיבו ובמהותו, ובמה שמתרחש אחריו, ורוב אזכורי המוות שבקבצים אלו לא באים אלא לתת הנחיות הלכתיות לקרובים ולא לו שנסארים בחיים בסביבת המת, ראה: Alan Jeffrey Avery-Peck, "Death and Afterlife in the Early Rabbinic Sources: The Mishna, Tosefta, and Early Midrash Compilations," in Alan J. Avery-Peck and Jacob Neusner, eds., *Judaism in Late Antiquity* (Leiden: Brill, 2000) 243–53. אבל, אין להסיק מכך שאשר עניני המוות לא העסיקו את התנאים ואת קהלם. שכן, אופים של החיבורים הללו, המשנה והתוספתא, הוא הלכתי, ומשום כך לא נכללו בהם עניני אמונה והשקפה. ראה: Neil Gillman, *The Death of Death: Resurrection and Immortality in Jewish Thought* (Woodstock, Vt.: Jewish Lights, 1997) 113–14.

6 כך עולה בכיור ממיכילתא דר"י, מס' דבחדש, יתרו, פרשה ט (מהד' האראוויטץ-רבין [ירושלים: במברגר ואהרמן, תש"ך] 237): „אלו איפשר להעביר מלאך המות הייתי מעבירו, אלא שכבר נגזרה גזירה. רבי יוסי אומר: על תנאי כך עמדו ישראל על הר סיני, על תנאי שלא ישלוט בהם מלאך המות, שנאמר (תה' פב, ו): „אני אמרתי אלהים אתם ובני עליון כלכם. חבלתם מעשיכם, אכן כאדם תמותון וכאחד השרים תפוזו (שם).“ על שתי הדעות המובאות במכילתא מוסכם, כי מלאך המוות שולט בעם ישראל, אלא שלדעת רבי יוסי, הם היו יכולים להנצל ממנו, ובעצם להנצל ממוות בכלל, בעקבות מעשה הר סיני. דא עקא, ישראל חיבלו מעשיהם וחטאו בעגל, ומשום כך איבדו את המעלה המיוחדת הזו.

7 1. על פטירת אהרן, ראה: ספרי דברים, פיסקא שלט (מהד' אליעזר ארי' פינקלשטיין [ניו-יורק: בית המדרש לרבנים באמריקה, תשכ"ט] 389); ספרי וזטא, חקת, יט, כא-כו (מהד' חיים שאול האראוויטץ [ירושלים: ספרי ואהרמן, תשכ"ו] 315). וראה גם ספרי דברים, פיסקא שה (מהד' פינקלשטיין, 326), שם נאמר ביחס לאהרן הביטוי „אלהים נגזו לחיי העולם הבא“ והוא הביטוי שנאמר שם גם ביחס לפטירת משה, שמכאיר שלא היה למלאך המוות חלק במיתתו. 2. על פטירת בני אהרן, ראה: ספרא דבי רב (ירושלים: הוצאת ספרא, תשי"ט) פרשתא א, כב-כג; שם, פרשתא א, לד (להלן, ספרא). אמנם, בניגוד למדרשים הללו, שבהם מפורש הדבר שנרב ואביהוא הומתו ע"י ה', הרי שבשניים אחרים שולב מלאך לסיפור מיתתם. בספרי במדבר, פיסקא מד (מהד' חיים שאול האראוויטץ [ירושלים: ספרי ואהרמן, תשכ"ו] 49), נאמר: „היה רבי יוסי אומר: המלאך מדרן מתים עד שיצאו ונפלו להן בעזרה“ ולעומת מדרש זה שייחס רק את הוצאתם לחוץ למלאך, הרי שיש מדרש שייחס אף את מיתתם למלאך. כך נאמר בספרא שמיני, שם, לד (להלן נוסח ספרא כתב יד רומי [מהד' פינקלשטיין [ניו-יורק: בית המדרש לרבנים באמריקה, תשי"ז] עמ' קצה]): „נגפם המלאך, ורחפם והוציאן לחוץ; אכן, יש לשים לב, שהגורם השמימי ששולב במדרשים הללו הוא מלאך ולא מלאך המוות! לנידון כאן, יש משמעות רבה לפרט הזה, לפי שבכל הספרות התנאית, עד כמה שידנו מגעת, לא מתייחסים למלאך המוות בתואר „מלאך“ סתם אלא בתואר „מלאך המוות“ (וראה בעניין זה גם להלן סע' ג, החומר האמוראי שבבבלי 2 [עמ' יח-ט]). ואם כן, ברור הדבר שאין במדרשים הללו כל אמירה בנוגע למלאך המוות ומעורבותו במיתת הצדיקים, וכנאלו, הם אינם חורגים מן התמונה הכללית העולה ממדרשי ההלכה המפורסמת בפנים. בהקשר זה יש להוסיף, שיתכן שמקום המשכן ומקום המקדש בכלל מופקעים משליטתו של מלאך המוות (בדומה למקומות אחרים שהופקעו משליטתו, כמו לזו, ראה: בבלי סוטה מו ע"ב). כך משתמע מן הכרייתא ששנה רבי חייא, המובאת בבבלי יומא יט ע"ב (ביחס ל„צדוקי אחד שהתקין מכתוב והכניס“ שנענש על כך): „ויש אומרים: ביציאתו מת. דתני רבי חייא כמין קול נשמע בעזרה, שבא מלאך וחבטו על פניו, ומצאו ככף רגל עגל בין כתפיו. שנאמר ורגליהם רגל ישרה וכף רגליהם ככף רגל עגל. לשון

מחקרנו מוקדש לבירור עמדתה של ספרות חז"ל בנוגע לשאלה, האם מיתת גדולי ישראל מסורה בידו של מלאך המוות, אם לאו. להלן יוצעו שלוש חטיבות מספרות חז"ל: מדרשי הלכה, ירושלמי ומדרשי אגדה, ותלמוד בבלי. בכל אחת מן החטיבות הללו תידון שאלה זו, וזאת לאור כלל החומר המצוי בהם בנוגע למוות ולמלאך המוות. אנו נשתדל להוכיח, שבתלמוד הבבלי, ואף זאת רק בסיפורים הסתמיים שבו, יש עמדה שונה מזו שמייצגות החטיבות האחרות.³ לאור ממצא זה, ניתן את הדעת לזמנם של הסיפורים הללו ולשאלת יחסם לשאר החומר שבבבלי, ונעלה את הטיעון, שסיפורים אלו מאוחרים לחומר התנאי והאמוראי שבבבלי. לאחר שנבסס טיעון זה, ננסה לברר מה פשרה של העמדה המיוחדת, המשתקפת מן הסיפורים הללו, ומה יש ללמוד ממנה על החכמים הבת-אמוראים, אשר מכונים „הסתמאים“⁴

א. עמדת מדרשי ההלכה מיתת גדולי ישראל והצדיקים איננה מסורה למלאך המוות

כדי שתתקבל תמונה מדויקת ביחס לקבצים התנאיים נקדים לומר, שמלאך המוות נזכר בהם מפורשות ביחס לשני עניינים בלבד (מעמד הר סיני ופטירת משה), וזאת רק במדרשי

האנציקלופדיה העברית (תשל"ג) כ"ג: 525-526. ובהרחבה, ראה לפי הפירוט הבא:

1. מן הבולטים ביותר שעסק במלאך המוות היה חיים שורצבאום. מאמריו בעברית שבו ונדפסו בספרו: ממקור ישראל וישמעאל: יהדות ואיסלאם באספקלריה הפולקלור (תל-אביב: הוצאת דון, תשל"ה), 281-318 (להלן: שורצבאום, ממקור ישראל). (וראה גם ספרו: עלי יסיף, עורך, שורשים ונופים [באר שבע: הוצאת אוניברסיטת בן גוריון בנגב, תשנ"ד] 56-73, שם נדפס המאמר „קוצר ראותו של מלאך המוות“ בעריכה מחודשת ומעודכנת). גם מאמריו באנגלית שבו ונדפסו יחד בספר: Haim Schwarzbaum, *Jewish Folklore Between East and West: Collected Papers*, ed. Eli Yassif (Beer-Sheva: Ben-Gurion Univ. of the Negev Press, 1989) 31-73, 143-72 (להלן: שורצבאום, פולקלור יהודי). כמו כן, חומר חשוב על-אודות מלאך המוות נמצא בספרו: Univ. of the Negev Press, 1989) 31-73, 143-72 (להלן: שורצבאום, פולקלור יהודי). *Studies in Jewish and World Folklore* (Berlin: Walter de Gruyter, 1968) 279-93.

2. על התייחסות לסיפורים מסוימים בהם מעורב מלאך המוות, ראה למשל: יונה פרנקל, עיונים בעולמו הרוחני של סיפור האגדה (תל-אביב: הקיבוץ המאוחד, תשמ"א) 41-61 (להלן: פרנקל, עיונים); עלי יסיף, סיפור העם העברי (ירושלים: מוסד ביאליק, תשנ"ד) 130-131 (להלן: יסיף, סיפור העם); רלה קושלבסקי, „הומור ותפקודיו בגירסאות הסיפור, רבי יהושע בן לוי ומלאך המוות“, מחקרי ירושלים בפולקלור יהודי, יט-כ (תשנ"ח) 329-344 (להלן: קושלבסקי, „הומור“); Rella Kuschelsky, *Moses and the Angel of Death* (Peter Lang: New York, 1995) (להלן: קושלבסקי, משה ומלאך המוות). ולאחרונה: קושלבסקי, בתוך יואב אלשטיין, אבידב ליפסקר, ורלה קושלבסקי, עורכים, אנציקלופדיה של הסיפור היהודי (רמת-גן: אוניברסיטת בר-אילן, תשס"ה) 135-167 (מדרשי פטירת משה רבינו), 261-279 (ר' יהושע בן לוי ומלאך המוות) (להלן: קושלבסקי, אנציקלופדיה).

3. על טיפול במקבץ סיפורים, ראה לדוגמה: Eliezer Diamond, „Wrestling the Angel of Death: Form and Meaning in Rabbinic Tales of Death and Dying“, *JSJ* 26 (1995) 76-92 (להלן: דיימונד, „היאבקות“).

4. על דיסרטציה על מלאך המוות, ראה: כהן, „מוטיב-אינדקס“ עבודתו זו מהווה אנציקלופדיה של מוטיבים על-אודות מלאך המוות. כהן אסף 69 מקורות מן הספרות התלמודית והמדרשית, וחילקם לנושאים ותתי נושאים על-אודות טיבו של מלאך המוות ופעילותו. אוסף זה כשלעצמו הוא בעל חשיבות, וכפי שהדגיש זאת כהן עצמו, בסיכום עבודתו, בעמ' 207-208.

3 למעט מדרשי האגדה המאוחרים שכבר הושפעו מן הבבלי בעניין זה, ראה להלן סעיף ב, מדרשי האגדה.

4 כהגדרת דוד הלבני, ראה להלן ראש סעיף ה, והערות 73, 74.

אין לי אלא מיתת משה מפי הקב"ה, מניין אף מיתת אהרן? – אמרת כאשר מות אהרן אחיד (דברים לב, נ). ומניין אף מיתת יהושע? – שנאמר כאשר הייתי עם משה אהיה עמו (יהושע א, ה). ומניין אף מיתת הצדיקים? – אמרת והלך לפניך צדקן כבוד יי' יאספך (ישעיה נח, ח).

ספרי זוטא קובע ברורות, שכמיתת משה, שהיתה, "מפי הקב"ה" כן היא "מיתת הצדיקים" הואיל ולא מצאנו במדרשי ההלכה מוטיב מיוחד בפטירת משה אלא זה בלבד – שמלאך המוות לא הצליח ליטול את נשמתו והקב"ה הוא שנטלה – ברור הדבר, שלכך מתכוון המדרש שלפנינו בהגדרת מיתתו של משה, "מפי הקב"ה" ולמיתה שכוז, הוא מלמדנו, זכו אהרן ויהושע, וכן זוכים לה שאר הצדיקים.¹³

בסגנון דומה מנוסחת דרשה זו במדרש תנאים לדברים (לד, ה), אלא שבה נוסף משפט בפתיחת הדרשה, שאינו מותיר כל ספק בטיב מיתת משה ומיתת הצדיקים. כך נאמר שם:

על פי ה' – בנשיקה, מלמד שמיתת משה מפי הקדש. אין לי אלא מיתת משה, ומנ' אף מיתת אהרן... ומנ' אף מיתת מרים... ומנ' אף מיתת יהושע... ומנ' אף מיתת הצדיקים אמ' (ישע' נח, ח) והלך לפניך צדקן כבוד ה' יאספך.

מדרש זה מגדיר את מיתת משה, "בנשיקה" נוסף להגדרה, "מפי הקדש" ובכך מחדד ומבהיר את העובדה, שהנידון כאן (מיתת משה ומיתת הצדיקים) הוא מיתה שלא מעורב בה אלא הקב"ה לבדו. לאמור: הקב"ה הוא שממית – "בנשיקה".¹⁴ לצד הדרשות שהובאו עתה, המתייחסות באופן מפורש רק למיתת הצדיקים, הרי שבספרי דברים ובספרי זוטא לבמדבר יש דרשות המתייחסות גם למיתת הרשעים, ובכך מחדדות ומשלימות את התמונה. כך למשל, נאמר בספרי דברים:¹⁵

על פי ה' – כשהמקום נוטל נשמתם של צדיקים נוטלה מהם בנחת רוח. משלו משל למה הדבר דומה... כך כשהמקום נוטל נשמתם של צדיקים נוטלה בנחת, וכשהוא נוטל נשמתם של רשעים מוסרה למלאכים רעים, למלאכים אכזריים, כדי שישמטו את נשמתם, וכן הוא אומר (משלי יז, יא): ומלאך אכזרי ישולח בו, ואומר (איוב לו, יד): תמות בנוער נפשם.

הקבורה ולומר כי כשם שקבר הקב"ה את משה, כך הוא קובר את כל הצדיקים, שהרי המציאות מכחישה הבנה שכזו. לאמור: כשם שהקב"ה לבדו הוא שהמית את משה, כך הוא לבדו שממית (= אוסף) כל צדיק וצדיק. (ואמנם, לפי זה אין השוואה מלאה בין הצדיקים לבין משה, שהרי את משה הקב"ה גם אסף וגם קבר. וכבר עמדו על כך מפרשי משנת סוטה, פ"א מ"ט, שאין כאן השוואה מושלמת. כך למשל, כתב ר"ט הלר, תוספות יום טוב, שם: "ומ"מ בהא עדיף מרע"ה, שעמו לא נתעסק אלא המקום ב"ה, משא"כ בשאר הצדיקים שכבוד ה' יאספהו, ועכ"ז מתעסקים בו בני אדם כדרך כל הארץ..."). הבנה זו, ש"אסיפה" האמורה בספרי, על יסוד הפסוק מישעיה, משמעותה מיתה, מאוששת גם מן האמור בספרי זוטא, נשא, ו, כו (מהד' האראוויטץ, 249): "לא דיין לצדיקים שמיתתן בידי כבוד, שני והלך לפניך צדקן כבוד ה' יאספך" הרי לפנינו ש"אסיפה" ר"מיתה" חד הם.

13 והשווה לדברי ספרי זוטא, לעיל בסוף ההערה הקודמת. ביחס לצדיקים: "שמיתתן בידי כבוד".

14 כאן, לראשונה, בספרות התנאים, מופיע הביטוי "בנשיקה" במשמעות של מיתה על ידי הקב"ה בעצמו, ללא מעורבות של כל גורם אחר, ובכלל זה מלאך המוות. להיקריות נוספות של ביטוי זה כמגדיר את מיתת משה, אהרן ומרים, ושאר הצדיקים, במקורות מאוחרים יותר, ראה למשל: בבלי מו"ק כח ע"א; בב"ב יז ע"א; אבות דר' נתן, נוסח א, פ"ב; שיר השירים רבה, א, ה; תנחומא ואתחנן, ו.

15 ספרי דברים, פיסקא שנו (מהד' פינקלשטיין, 428). וכעין זה בספרי זוטא, פינחס כז, יב (מהד' האראוויטץ, 319). וראה גם ספרי זוטא, נשא ו, כו (שם, 249).

2. זאת ועוד, אף בסיפור היחיד בכל מדרשי ההלכה שבו מתוארת בהרחבה מעורבותו של מלאך המוות, הוא סיפור פטירתו של משה, אין המלאך מצליח להמיתו, ומי שבסופו של דבר ממיתו הוא הקב"ה לבדו.⁸ כך אמרו ישראל למלאך המוות, לפי המסופר בספרי דברים:⁹ „אמרו לו: אלהים הבין דרכו, אלהים גנוזו¹⁰ לחיי העולם הבא, ואין כל בריה יודעת בו, שנאמר (דברים לד, ו): ויקבור אותו בגיא“ גם מדרש תנאים לדברים מדיגיש שפטירת משה לא נמסרה למלאך המוות, ואף בסגנון נחרץ ומפורש יותר. כך למשל, מסופר בו שה' אמר למשה:¹¹ „שאין אני מוסרך ביד מלאך המות, אלא אני בעצמי מיטפל בך“.

3. ומעל הכל, יש במדרשי ההלכה מגוון של דרשות אשר קובעות מפורשות שאין לראות במיתת משה ואהרן ע"י הקב"ה בעצמו אירועים חריגים, אלא כן היא מיתת כל הצדיקים – ע"י הקב"ה בעצמו. כך למשל, נאמר בספרי זוטא:¹²

הברייתא ששנה רבי חיאי, המאשרת בכל עדי הנוסח, היא „מלאך“ (ולא „מלאך המות“), ומתקבל מכך הרושם שלא מלאך המוות הוא שהמית לאותו צדוקי אלא מלאך אחר. אולם דבר זה כשלעצמו תמוה: מדוע באמת לא הומת אותו רשע ע"י מלאך המוות? והרי בדבר הזה שוררת תמימות דעים ככל ספרות חז"ל, שמלאך המוות הוא שממונה על המתת הבריות – אם לא שנאמר שמקום המקדש מופקע מפעילותו של מלאך זה, ולגבי כל אדם! אמנם, עדיין יש מקום לשאול, מאחר שלפי המקובל במדרשי ההלכה, מיתת הגדולים והצדיקים מסורה להקב"ה בעצמו, מדוע נשתנה גורלם של נדב ואביהוא, ומיתתם נמסרה לידי מלאך – לפי אותה דעה בספרא ש„גנפם המלאך“? אפשר שהחשובה לכך היא זאת: נדב ואביהוא מתו בעיצומו של חטא – בהקריבם אש זרה, ושבעשה שכזו, שעת חטא ועוון, סבור מדרש זה, כי מעמד הצדיק והחכם משתווה לשאר כל אדם, בכחינת „חבלתם מעשיכם, אכן כאדם תמותו“ כאמור במכילתא דר"י (לעיל הערה 6). משום כך מספר מדרש זה, שנדב ואביהוא הומתו על ידי מלאך, ולא על ידי הקב"ה בעצמו. (ראה לכך, ששעת חטא משנה את „הכללים“ עולה מן המעשה הנזכר באותו צדוקי, לפי הנידון בו בירושלמי יומא א, ה, לט ע"א [ושנ].) שם בירושלמי מסופר, שרבי אבהו נשאל, היאך יתכן שמלאך המיתו לאותו צדוקי, והרי מפורש בתורה „וכל אדם לא יהיה באהל מועד בבואו לכפר בקודש עד צאתו [ויקרא טז, יז] – אפילו אותן שכתב בהן ודמות פניהם פני אדם [יחזקאל א, י] לא יהיו באהל מועד“! ושובתו היתה „בשעה שהוא נכנס כדרכו“ כלומר, הואיל ואותו צדוקי חטא, ולא נכנס למקדש עם הקטורת כהתאם לכללי ההלכה, גם ההנהגה השמימית חרגה מדרכה, ואף מי שבדרך כלל אינו מורשה להכנס בזמן הזה למקום המקדש, היינו מלאך, בפעם הזאת נכנס והמיתו).

8 אפשר שגם דרשת רשב"ג, במכילתא דר"י, מס' דעמלק, יתרו, פרשה א (מהד' האראוויטץ-רביץ, 192): „ר' שמעון בן גמליאל אומר, לא בקש המלאך להרוג את משה אלא לתינוק“ היא ביטוי נוסף לתפיסה, שמיתתו של משה מופקעת מן המלאכים, ומסורה לה' לבדו.

9 ספרי דברים, פיסקא שה (מהד' פינקלשטיין, 326–327).
10 למשמעות המונח „גניזה“ בתיאור מות משה, ראה בהרחבה: קושלבסקי, משה ומלאך המות, 45–58; קושלבסקי, אנציקלופדיה, 137–151.

11 מדרש תנאים לדברים, ג, כו. ובסגנון דומה במדרש תנאים לדברים לד, ה, נאמר: „אמ' משה לפני הקב"ה רבון העולמים הואיל וגזרת עלי מיתה אל תמסרני ביד מלאך המות. אמ' לו הקב"ה חיך שאני מיטפל בך וגונזך“.

12 ספרי זוטא, פניחס כז, יב (מהד' האראוויטץ, 318–319). ובסגנון שונה, בספרי במדבר, פיס' קו (מהד' האראוויטץ, 105): „מי לנו גדול ממשה שלא נתעסק בו אלא הקב"ה, שנאמר ויקבור אותו בגיא בארץ נבו (דברים לד, ו)... ולא משה בלבד, אלא כל הצדיקים הקב"ה אוספם, שנאמר והלך לפניך צדק וכבוד ה' יאספך (ישעיה נח, ח)“ (וכעין זה גם במשנה סוטה, פ"א מ"ט, לפי רוב כתבי היד, הגורסים: „ולא על משה בלבד אמרו, אלא על כל הצדיקים, שהמקום אוספן [או „אוספם“ או: „מאספם“], שנאמר והלך לפניך צדק כבוד ה' יאספך“ ראה: דקדוקי סופרים השלם, סוטה [ב' חלקים: ירושלים: הוצאת מכון התלמוד הישראלי השלם, תשל"ז-תשל"ט] א:קא). השוואה זו שעורך הספרי בין כל הצדיקים לבין משה, דומה שאין להבינה אלא ביחס לעצם המיתה. (שכן, אין אפשרות לייחס השוואה זו לעניין

מלאך המוות, ושמפורש בהם שהוא היה הגורם שממית, הם דווקא סיפורי פטירה של אישים „מן השורה” ולא של חכמי ישראל.²²

זאת ועוד, יש לזכור שיש בירושלמי לא מעט סיפורי פטירה של חכמים, תנאים ואמוראים, ומסוגים שונים.²³ יש סיפורים המתארים מה אמרו חכמים כשנפטר חכם פלוני, יש המתארים מה אמרו הנפטרים עצמם בשעת מותם, ויש המתארים אירועים יוצאי דופן, ניסים שונים, שהתרחשו כאשר נפטרו החכמים. כך שעובדה זו – שאין בו שום סיפור על אמורא או תנא, או כל גדול אחר, שהומת על ידי מלאך המוות – מקבלת משמעות עזה יותר. אם נצרף לכך את שהעלנו בסעיף הקודם, שהגישה הארץ-ישראלית הקדומה, כפי שהיא משתקפת במדרשי ההלכה, היתה שאין מיתת החכמים מסורה למלאך המוות (לעיל סע' א), כי אז מובנת יפה „היעדרותו” של מלאך זה מכל סיפורי פטירת החכמים שבירושלמי, ואך טבעית ומתבקשת המסקנה, ש„הירושלמי” אימץ גישה זו והחזיק בה.

נמצא אפוא, כי למרות שאין הירושלמי נוקט עמדה מפורשת בנוגע לשאלה מי ממית את החכמים, הרי שבשתיקתו, היינו באי-שילובו של מלאך המוות לסיפורי פטירתם – הוא ביטא את עמדתו.

מדרשי האגדה

עלינו להבהיר תחילה, כי חיבורים רבים, מגוונים ושונים זה מזה, כלולים במדרשי האגדה הארץ-ישראלים, ומקובל לחלקם לשלוש תקופות: התקופה הקדומה (המאה החמישית והשישית), תקופת הביניים (המאה השביעית עד אמצע המאה השמינית), ותקופת המדרש המאוחר (המתחילה באמצע המאה השמינית לערך).²⁴ חומר רב ומגוון שמתייחס למלאך

ברור אפוא שאין למנותם בשורה אחת עם גדולי האומה וחכמי הדורות.

22 בהקשר זה מעניין לציין לשני סיפורי פטירה נוספים, המובאים בירושלמי מועד קטן ג, ה, פכ ע"ד, שלמרות שמלאך המוות אינו נזכר בהם, מפרשי הירושלמי שילבוהו לסיפורים (ראה: פני משה וקרובן העדה שם), מן הסתם, תחת השפעת הסיפורים שבבבלי (להלן סע' ד). אכן, אף לפי המפרשים הללו, אין אנו עדים לחריגה מן התמונה ששרטטנו בפנים, לפי שאותם הסיפורים הם על פטירת „חד תלמיד מן דרב חסדא” ופטירת „חד תלמיד מן דבר פדיה” ואין תלמידים אנונימים אלו נמנים בשורה אחת עם רבותיהם.

23 לסיפורי פטירה מכל הסוגים שמוזכרים להלן בפנים, ראה למשל: ירושלמי ברכות ב, ח, ה ע"ב-ע"ג; שם עבודה זרה ג, א, מב ע"ג. וראה גם להלן הערה 45. חלק ניכר מן הסיפורים הללו זכו לדיונים שונים בספרות המחקרית. ראה לדוגמה: עפרה מאיר, סוגיות בפואטיקה של סיפורי חז"ל (תל-אביב: ספרית פועלים, תשנ"ג) 143-155 (על מקבץ סיפורי הפטירה שבירושלמי ברכות); מאיר, „מה בין איסור צלמים לשעת מותם של חכמים? לשאלת שיקולי העריכה של סוגיה בירושלמי” בתוך אבידב ליפסקר ורלה קושלבסקי, עורכים, מעשה סיפור: מחקרים בסיפורת היהודית מוגשים ליובא אלשטיין (רמת-גן: הוצאת אוניברסיטת בר-אילן, תשס"ו) 15-36 (על מקבץ סיפורי הפטירה שבירושלמי עבודה זרה).

24 על חלוקה זו ועל המדרשים הנמנים בכל תקופה, ראה: יונה פרנקל, דרכי האגדה והמדרש (ב' כרכים: גבעתיים: מסדה, יד לתלמוד, תשנ"ו) א: 3-10; פרנקל, מדרש ואגדה (ג' כרכים: תל-אביב: האוניברסיטה הפתוחה, תשנ"ז) ג: 763-766 ואילך. וראה גם: Myron B. Lerner, „The Works of Aggadic Midrash and the Esther Midrashim,” in Shmuel Safrai, Zeev Safrai, Joshua Schwartz, Peter J. Tomson eds., *The Literature of the Sages* (2 vols.; Aasen and Philadelphia: Van Gorcum and Fortress Press, 2006) 2:149-55. אמנם, יש האוחזים בחלוקה משולשת זו (מדרשים „קדומים” מדרשי „ביניים” ומדרשים „מאוחרים”), אלא שהם תוחמים אותה בגבולות זמן אחרים. לדעתם, המדרשים הקדומים שייכים לתקופה הביזנטית בא"י (מאות ה-ו, ומחציתה הראשונה של המאה הז'). מדרשי הביניים שייכים לתקופה הערבית-מוסלמית הקדומה (מחציתה השנייה של המאה הז' עד המאה הי'). מדרשים מאוחרים – שזמן עריכתם או חיבורם מאוחר למאה הי'. ראה: Moshe David Herr, „Midrash,” *EncJud* 14:182-85 (2nd ed., 2007) 11:1507-14 (1972) ולאחרונה: משה דוד הר, „אגדה ומדרש בעולמם של חז"ל

מן הפסוק שעליו מוסכת הדרשה (המתייחס למות משה), מן הפסוקים המובאים בסופה,¹⁶ וכן מן המשל ששולב בה (שלא צוטט כאן),¹⁷ עולה בבירור – שהנידון כאן היא פעולת ההמתה עצמה. ואם כן, הדרשה שלפנינו קובעת,¹⁸ שהצדיקים מיתתם ביד ה' ומיתתם בנחת, ולעומתם הרשעים מיתתם ביד מלאכים ומיתתם קשה, וזאת משום שמיתתם מסורה למלאכים רעים ואכזריים.¹⁹

כללו של דבר, מן החומר הנוגע למלאך המוות במדרשי ההלכה – הן מזה שבו הוא נזכר מפורשות הן מזה שמתעלם ממנו, ובעיקר מן החומר המתייחס למיתת הצדיקים – עולה בבירור, שמיתת הגדולים והצדיקים בישראל מופקעת מידי, והיא מסורה להקב"ה לבדו.

ב. גם בירושלמי ובמדרשי האגדה מיתת החכמים והצדיקים איננה מסורה למלאך המוות

בסעיף זה נתייחס לממצא שבחלמוד הירושלמי ולממצא שבמדרשי האגדה הארץ-ישראליים, מן התקופה הקדומה ועד לתקופה המאוחרת.

ירושלמי

החומר בירושלמי המתייחס למלאך המוות הוא זעום ביותר.²⁰ עם זאת, הן מן החומר המועט הזה והן מן החומר המרובה ממנו, המתייחס למיתת החכמים, משתמע במובלע, שהמתת החכמים איננה שייכת לפעילותו של מלאך זה.

ראשית, הירושלמי ער לקיומו של מלאך המוות, ומודע לכך שמיתת הבריות, ובכלל זה עם ישראל, מסורה לו. אבל, שני סיפורי הפטירה היחידים,²¹ שלתוכם הוא משלב את

16 לפי פשוטו של מקרא פסוקים אלו מתייחסים למיתה עצמה, ולא לאירועים שלאחר המיתה. כך למשל, על הפסוק (הנזכר בפנים) ומלאך אכזרי ישולח בו, כתב הראב"ע (משלי שם): „ישולח בו – להמיתו“ והפסוק השני, תמות בנוער נפשם, הוראתו הפשוטה היא שימותו בעודם נערים.

17 המשל מתייחס לפעולה של תביעת פיקדון, ומכאן שהנידון בנמשל הוא הפעולה של נטילת הנשמה (= הפקדון) שבגוף האדם, היינו ההמתה עצמה, ולא האירועים שמתרחשים לאחר מכן.

18 וביתר ביאור: את המשפט „כשהמקום נוטל נשמתם של צדיקים“ וכן את המשפט בצלע המקבילה „כשהוא נוטל נשמתם של רשעים“ יש לפרש במשמעות זוה – „כשהמקום מחליט ליטול את נשמתם“ וזה אפוא החילוק: „כשהמקום נוטל נשמתם של צדיקים“ או אז, „נוטלה בנחת“ – הוא עצמו נוטלה ונוטלה בנחת. ואילו „כשהוא נוטל נשמתם של רשעים“ או אז, לא הוא הנוטל, אלא „מוסרה למלאכים“ שהם יטלו, ולא מלאכים בעלמא אלא „מלאכים רעים, מלאכים אכזריים“ נמצא, שדרשה זו מתייחסת בעצם לשתי שאלות: מי הוא הממית, ובאיזה אופן הוא ממית, והיא מצביעה על שני הבדלים בין מיתת הצדיקים למיתת הרשעים.

19 יושם אל לב, שדרשה זו ייחסה את מיתת הרשעים למלאכים רעים ואכזריים ולא למלאך המוות. אבל כבר מצאנו בספרות התנאית, שלעיתים מלאכים שונים מקבלים את תפקידי ההמתה, ובעיקר כשמדובר בהענשת רשעים וחוטאים. ראה להלן הערה 60.

20 כשם שהחומר בירושלמי על מלאכים בכלל הוא זעום ביותר, וכפי שכבר ציינ זאת לוי גינצבורג: „In the Palestinian Talmud, angels are rarely mentioned“ ראה: Louis Ginzberg, *On Jewish Law* (Philadelphia: The Jewish Publication Society of America, 1955) 22.

21 שני הסיפורים הללו באים בסמיכות בירושלמי כלאים ט, ג, לב ע"ג, ובירושלמי כתובות יב, ג, לה ע"ב. הסיפור האחד הוא סיפור פטירתם של אליהורף ואחיה בני שישא סופרי שלמה, והסיפור השני הוא סיפור פטירתם של שנים מתלמידי רבי, שהיו בניו של ר' ראובן בן איסטרוביליא. כרם, אין לנו כל ידיעות על אישים אלו מעבר למעט הזה שנזכר בסיפורים הללו. באשר לסופרי שלמה, הם נזכרים בירושלמי בדיוק כפי שהם נזכרים במלכים א; ד, ג: אליהורף ואחיה בני שישא סופרים, ובאשר לבניו של ר' ראובן בן איסטרוביליא. ירושלמי זה הוא המקור היחיד שבו הם נזכרים, והם גם לא נזכרים בו בשם.

המתייחסים למלאך המוות, ניכר הדבר ובולט, שהם „מרחיקים” אותו מפטירתם של הגדולים והחכמים.²⁸

עובדה זו, שאין במדרשי האגדה האלו כל סיפור פטירה של משהו מאישי המקרא הגדולים, או מן התנאים והאמוראים, שמסופר בו שמלאך המוות היה הגורם הממית, מקבלת משמעות עזה יותר, לאור העובדה שיש במדרשים אלו סיפורי פטירה של חכמים, ומסוגים שונים, וכן לאור העובדה, שסיפור הפטירה היחיד שנשתמר בהם, שבו מעורב מלאך המוות במיתת גדול וצדיק, הוא סיפור פטירת משה, ובו מודגש דווקא המוטיב (הקדום) שכבר הודגש במדרשי ההלכה, שלא מלאך המוות המיתו אלא ה' לבדו.²⁹

נוסף לנתונים הללו, הרי שבמדרשי האגדה הבאים – שיר השירים רבה וקהלת רבה –

(על אחריות זו של אברהם, ראה: מתנות כהונה ומהרז"ו, בראשית רבה שם. ובאופן קצת אחר, ראה: ר"ש אלגאזי, שמע שלמה, אמשטרדם, ת"ע, חיי שרה, דף ו ע"ד). לשתי ההבנות שהצענו עתה עולה, שהמדרש שלפנינו לא מביע עמדה בנוגע לאופן בו מתה שרה או ימות אברהם בעתיד, אלא הוא מתאר פעולה מסוימת של מלאך המוות נוכח אברהם, שהתרחשה סמוך לפטירת שרה וקבורתה (והשווה לתנחומא תצוה, טו: „כשראה אהרן למלאך מתרים כנגדו” שגם אין פעולת ההתרסה מלמדת כי מיתת אהרן נמסרה למלאך). הואיל והרושם הכללי והמצטבר ממדרשי האגדה הקדומים הוא שמיתת הגדולים והחכמים איננה מסורה למלאך המוות, ומאחר שהמדרש שלפנינו מנוסח באופן שמאפשר בהחלט לראותו כמשתלב גם הוא לתפיסה הזו באחת משתי ההבנות שהצענו, דומה שנכון וראוי לבכר את ההבנות האלו. זאת ועוד, יש לזכור, שדווקא בכתב היד המעולה, כת"י לונדון, הנוסח הוא: „ושהיה רואה מלאך מתרים כנגדו” (!) – „מלאך” ולא „מלאך המוות” ולא מן הנמנע, שדווקא נוסח יחידאי זה, אשר מובן יפה לפי האופן השני שהוצע כאן (שהרי לאופן זה, בעצם, ההתרסה יכולה הייתה להתבצע על ידי כל מלאך), הוא שמשמר את הנוסח הקדום והראוי.

28 לדוגמה: 1. בבראשית רבה, סח, ב (מהד' תיאודור-אלבק, 770), נאמר ביחס ליעקב: „ה' ישמרך מכל רע – מעשו הרשע ומלבך, ישמור את נפשך – ממלאך המוות” מדרבי המדרש משתמע, לכאורה, שמיתת יעקב איננה מסורה למלאך המוות, וכפי שפירשו מהרז"ו ועץ יוסף, שם. 2. במדרש איכה (מהד' ר"ש בוכר [ווילנא: דפוס האלמנה והאחים ראם, תרנ"ט] ה, טז, עמ' 159) ובקהלת רבה (י, ה) מסופר על אנטונינוס ששאל את רבי מי משניהם ימות קודם, והשיבו רבי „אנא” ולשאלת תלמידיו מדוע השיבו כן, השיבם רבי לפי נוסח קהלת רבה: „אמר לון: אן אתת ענתה מה אית בה, ואן אתא מלאך המוות דיסביניה, מה הוא מימר ליה, לא אתת לגבי, לית אנא אתי. ולא עוד אלא וכו'” וכעין זה השיבם רבי לנוסח מדרש איכה (אלא ששם הוקדמה האפשרות המתייחסת לאנטונינוס): „אמר להון: אין אתי מלאך מותא מסביניה, מה אית ליה למימר? – אזל סב רבי קדמיו, ולא אנא אתי. ואין הוות כן, אינון אמרין בריך אלהיון דיהודאי, ואפילו הן ידעין מיתותיהון” והנה, בולטת לעין העובדה, שבשני המדרשים הללו הוזכר מלאך המוות דווקא ביחס לפטירת אנטונינוס, ולא ביחס לפטירת רבי.

29 על סיפורי פטירה שונים, ראה למשל: בראשית רבה נט, ד; ס, ב; ויקרא רבה, ל, א; פסיקתא דר"כ, פ"ס; כז; איכה רבה, א, לז; קהלת רבה, ה, טז-יח, פ"ס; יא; שיר השירים רבה, ג, פ"ס; ז, ו; פ"ס, ב, ד-ו.

על סיפור פטירת משה, ראה: פסיקתא דרב כהנא, ח"ב, נספחים, וזאת הברכה (מהד' מנדלבוים [ניו-יורק: בית המדרש לרבנים שבאמריקה, תשכ"ב] 448). וכן הדבר גם בגלגוליה המאוחרים יותר של מסורת זו, ראה למשל: אבות דר' נתן, נו"א, פ"ב (מהד' שטער [ניו-יורק: בית המדרש לרבנים שבאמריקה, תשנ"ז] 49-51), נו"ב, פכ"ה (שם, 51-52), הוספה ב לנוסחא א (שם, 156-157); דברים רבה, יא, ה; שם, יא, י; תנחומא ואתחנן; ו, תנחומא בוכר שם; תנחומא וזאת הברכה, ג; תנחומא בוכר, וזאת הברכה, ב.

ואמנם, יש סיפור חריג אחד במדרשי האגדה, הוא סיפור פטירתו של דוד, המופיע בקהלת רבה, ה, י. אבל, כבר העיר עליו הירשמן, שאינו אלא העתקה מאוחרת מן הכבלי (שבת ע"ב), ומעידים על כך כל כתבי היד של קהלת רבה – שבהם הסיפור הזה חסר! ומכאן, שסיפור זה גם אינו נוגע לשאלת היחס בין קהלת רבה והתלמוד הכבלי. על העניין כולו, ראה: Marc G. Hirshman, „Midrash Qohelet Rabbah: Chapters 1-4” (Ph.D. Diss.; New York: Jewish Theological Seminary of America, 1983) (הטקסט בעברית) ח"א, מבוא, עמ' 58 ואילך (להלן: הירשמן, מדרש קהלת רבה).

המוות ישנו בכלל ספרות האגדה הזו,²⁵ אבל לנידון כאן, חשוב בעיקר הממצא שבשתי התקופות הראשונות, לפי שהוא זה שמשקף את העמדה הארץ-ישראלית, עוד לפני שנחשפה לעמדה הבבלית המאוחרת (להלן ס' ד-ה). משום כך, בדינונו עתה נפרד בין המדרשים השייכים לשתי התקופות הראשונות, אשר נגדירים כאן המדרשים הקדומים, לבין המדרשים מן התקופה השלישית, הם המדרשים המאוחרים.

מדרשי האגדה הקדומים. מן החומר הנמצא במדרשים אלו, הן מזה שמתייחס למלאך המוות והן מזה שמתייחס למיתת החכמים ולמוות בכלל, עולה ומשתקפת עמדה זוהה, אם במובלע ואם במפורש – שמיתת הצדיקים והחכמים בשישראל איננה מסורה למלאך המוות. ראשית, מכלל המדרשים הללו, וגם מן היותר קדומים שבהם, כמו בראשית רבה, איכה רבה, ויקרא רבה, ופסיקתא דרב כהנא, משתמע במובלע שמלאך המוות אינו ממית את החכמים. עובדה היא, שיש במדרשים אלו מגוון של מימרות, דרשות ומעשים, המלמדים באופן ברור שמלאך המוות הוא שאחראי למיתת הבריות ולמיתת ישראל.²⁶ אבל אין שום מקור שכזה, המלמד על חלקו במיתת הגדולים והחכמים.²⁷ אדרבה, במקורות מסוימים,

בארץ ישראל, בתוך יהושע לוינסון, יעקב אלכוביץ וגלית חזן-רוקס, עורכים, היגיון לינה: היבטים חדשים בחקר ספרות המדרש, האגדה והפיוט (ירושלים: הוצאת מאגנס, תשס"ז) 131-134 (בעמ' 133), הערה 11, הר הדגיש שהוא כבר הציע חלוקה זו לפני כמה עשרות שנים). על מדרשי האגדה השונים וזמנם, עם הפניות רבות לספרות מחקרית, ראה גם: Hermann Leberecht Strack and Gunter Stemberger, *Introduction to the Talmud and Midrash* (Minneapolis: Fortress Press, 1992) 300-382. אכן, בנידון כאן, עניין החלוקה הוא טכני בלבד, ואינו נוגע לאשיות של הדברים (שכן, ניצנים של תפיסה אחרת בנוגע למלאך המוות מופיעים רק במדרשים שזמנם מאמצע המאה השמינית ואילך, ואין הדבר משנה, אם נגדיר את המדרשים הללו כמדרשי ביניים או כמדרשים המאוחרים), ומובן אפוא, שאין לראות בבחירתנו בפנים נקיטת עמדה במחלוקת החוקרים בשאלת חלוקת המדרשים לתקופות.

25 אמנם, חלק ניכר מן החומר הזה הוא מקבילות ופיתוחים שונים לסיפורי הפטירה של משה ואהרן שמופיעים כבר במדרשי ההלכה (לעיל ס' א, בפנים ובהערה 7), וכן מקבילות שונות למסורת שמופיעה כבר במכילתא דר"י (לעיל הערה 6), שבמעמד הר סיני היו ישראל אמורים לצאת מתחום שלטונו של מלאך המוות, ולהיות חסינים מפני המוות בכלל, אלמלא חטאו בעגל.

26 על היותו אחראי למיתת הבריות, ראה לדוגמה: בראשית רבה, כא, א (על אדם הראשון – „הוא ותולדותיו עשויים מרמס לפני מלאך המות“); שם סח, ט („לח שלא שלט בה מלאך המות“ משמע שבשאר המקומות שולט). ועל היותו אחראי למיתת ישראל, ראה לדוגמה: ויקרא רבה, יח, ג, ששם נאמר: „בשעה שעמדו ישראל על הר סיני... באותה שעה קרא הקב"ה למלאך המות ואמר לו אע"פ שעשיתי אותך קוזמוקרטור על הבריות, אין לך עסק באומה זו" משתמע ממדרש זה, שקודם לכן, וכן לאחר שירדו ישראל ממעלתם, כשנשתברו הלוחות, כעולה מדברי המדרש שם, מיתת ישראל מסורה למלאך זה.

27 למעט לכאורה מקור אחד, עומם, בבראשית רבה, נח, ו (מהד' תיאודור-אלבק [ירושלים: ספרי ואהרמן, תשכ"ה] 624). כך נאמר שם: ויקם אברהם מעל פני מותו – מלמד שהיה רואה מלאך המות מתריס כנגדו" (בכת"י לונדון: „שהיה רואה מלאך מתריס כנגדו" וראה על כך בסוף ההערה). לכאורה, יש מקום לטעון, כי נוכחותו של מלאך המות כפטירת שרה והתרחסו כנגד אברהם מלמדים שמיתת שרה נתבצעה על ידו, ושגם מיתת אברהם מסורה לו. אבל, לאמיתו של דבר, אין כל הכרח בהבנה שכזו. ואין כל מניעה להציע שתי הבנות שונות למדרש זה: 1. אפשר שהתרחס המלאך איננה אלא ביטוי למוכנותו ולרצונו להמית. כלומר, עתה, לאחר מיתת שרה סבור היה שניתנה לו רשות להמית את אברהם, ומשום כך הגיע. אבל, המלאך טעה בסברתו. (יתכן שהצמדת הדרשה שלפנינו למילים ויקם אברהם מעל פני מותו אף מרמזת שאברהם, „מעל" מלאך המות [= „מתו" ויכול לו]. על מוטיב זה, שמלאך המות סבור שניתנה לו רשות להמית, ומשום כך הוא מגיע, אבל הוא טועה בסברתו, ראה: ספרי דברים, פ"ס, שה (לעיל ס' א, 2, עמ' ד); פסיקתא דר"כ, נספחים, 448, ביחס למשה. (וישנו מוטיב קדום שכזה גם ביחס לגשמה, הסבורה שתחזור לגוף בימים הסמוכים למוות, ראה: בראשית רבה, ק, ז). 2. אפשר שהתרחס זה ענינה קנטור בלבד, ומלאך המות כא לרמוז לאברהם, שהוא, אברהם, האחראי למותה של שרה.

משקפות עמדה זו, שמלאך המוות הוא שממונה על מיתת הגדולים והחכמים. ברם, דרשות אלו הן עמומות, וככאלו ניתן להבינן ביותר מאופן אחד, ואין אפוא וודאות שהן מייצגות עמדה חדשה.³⁶ כמו כן, שתיים מן הדרשות הללו, מתוך סגנון ולאור השוואה למקבילותיהן, ניכר עליהן שבצורתן זו הן שייכות לרובד היותר מאוחר שבמדרשים האלו.³⁷

בכל הגוף, ותופס המלאך בראש הקנה ומושכו, מגוף הצדיק מושכו בנחת, כאלו מושך חוט מן החלב, מגוף הרשע דומה כאלו מושך פיטורי בפי וושט... הנה כי כן מפורש לפנינו במדרש, שאף מיתת הצדיק, כמו מיתת הרשע, נעשית על ידי מלאך המוות.

36 אלו הן ארבע הדרשות: 1. דברים רבה, ט ג; 2. ילקוט שמעוני, בראשית, רמז ד, בשם מדרש אבכיר; 3. סדר אליהו רבה, פרק ז (מהד' מאיר איש שלום [ירושלים: ספרי ואהרמן, תשכ"ט] פרק ח, עמ' 39); 4. תנחומא הנדפס, חוקת יז (והמקבילות). על שתי הדרשות הראשונות נעמוד עתה, ונדגים את עמימותן, ועל השתיים האחרות נעמוד בהערה הבאה. 1. בדברים רבה (ט, ג), נאמר: „דבר אחר: מהו ואין שלטון ביום המות (קה' ח, ח) – אין מלאך המות אומר הואיל וזה מלך נותר לו עוד יום אחד או שני ימים, אין לפניו באותו היום משוא פנים. תדע לך שכל ימיו של דוד נקרא מלך, שנאמר (מל"א; א, א): והמלך דוד זקן, כיון שהגיע למיתתו אין כתיב בו מלכות, מניין שנאמר (שם; ב, א): ויקרבו ימי דוד למות? ממדרש זה משתמע, לכאורה, שדוד המלך הומת ע"י מלאך המוות. אבל לאמיתו של דבר, אין כל הכרח בהבנה זו. שכן, כל שביקש בעל הדרשה להוכיח מדוד הוא, שגם מלך, כאשר הוא מגיע ליום מיתתו, אינו קרוי מלך, וזאת משום שאף לו אין חסינות בפני המוות. אבל לא הייתה כוונתו ללמד על אופן מיתתו של דוד. ואכן, בשתי מקבילות קדומות לדרשת הפסוק הנזכר, ואין שלטון ביום המות, ההתייחסות היא לשעת המוות ולא למלאך המוות, ובהקשר זה ציינו את מיתת דוד! ראה: בראשית רבה, צו, ג (מהד' תיאודור-אלבק, 1193-1194); פסיקתא דרב כהנא, ח"ב, נספחים, וזאת הברכה (מהד' מנדלבוים, 450). לאור מקבילות אלו, אפשר שהמדרש בדברים רבה, בניסוחו שלפנינו, הוא פיתוח מאוחר של מסורת קדומה, וככזה יש לשייכו לדרשות שיובאו בהערה הבאה. 2. ילקוט שמעוני, בראשית, רמז ד, הובא משם מדרש אבכיר: „והארץ בוכה, אמרה לפניו רבש"ע שמים וכל אשר עליהן נהנין מזיו שכינה ואין מלאך המות שולט בהן לפיכך הן מזמרין, אני שתלית מזוני ביד אחר וכל מה שעלי מלאך המות שולט בהן, לפיכך אני בוכה" מלשון המדרש, „וכל מה שעלי מלאך המות שולט בהן" משתמע לכאורה שגם מיתת הצדיקים מסורה לו. אבל, יושם אל לב, שהמדרש לא מתייחס באופן מפורש לצדיקים, ואין אפוא מניעה לומר שהלשון הכוללנית („וכל מה שעלי") איננה בדיוקא, אלא היא מתייחסת לרוב רובם של „דרי מטה" – בני האדם ושאר בעלי החיים, ו„רובו ככולו" (כגישת חז"ל, ראה למשל: נזיר מב ע"א; חוריות ג ע"ב).

37 להלן שתי הדרשות הללו. 1. בסדר אליהו רבה, פרק ז, (מהד' איש שלום, פ"ח, 39), ביחס לסיפור המלאך המשחית בעם בימי דוד, מסופר: „באותה שעה ירד מלאך משמי מרום והרג את גד החוזה ואת ארבעת בניו של דוד ואת הזקנים אשר היו עם דוד, וכיון שראה דוד חרבו של מלאך המות מאותה שעה נכנסה בו רתת וקרירות ושוב לא היה בו כח" סוף דברי המדרש המתייחסים למלאך המוות מלמדים, לכאורה, כי הוא המלאך שירד משמי מרום והמית את גד החוזה. בני דוד והזקנים, ונמצא, שלדעת מדרש זה, מיתת הגדולים מסורה לו. אכן, יש לשים לב לעובדה, שמיתת גדולים אלו בשעת מגיפה היתה, ולא מן הנמנע שבשעה זו מתעצם כוחו של מלאך המוות אף כלפי הגדולים בישראל, כמוסבר להלן הערה 58, ונמצא שאין מסורת זו מלמדת על חלקו של מלאך המוות במיתת החכמים „השגרתית" אבל, לאמיתו של דבר, אין לנו צורך בהסבר זה, משום שמסורת זו שלפנינו בסדר אליהו רבה היא יחידאית, ובכל מקבילותיה המדרשיות (ואף המאוחרות) אין אזכור למלאך המוות אלא למלאך בלבד! ראה: פרקי ד' אליעזר (מהד' היגער, פרק מב, חז"ר [תש"ח] עמ' 224); מדרש שמואל, פרשה לא, ומדרש תהלים (מהד' בובר, מזמור יז, ד, עמ' 126-127). וגם: בבלי ברכות סב ע"ב, להלן סעיף ג, החומר האמוראי שבבבלי, 2 (עמ' יח). (ראמנס, בכל המקבילות הללו לא מסופר על מיתת גד החוזה והזקנים אלא על מיתת אבישי בן צרויה, אבל הענין אחד, שהרי במיתת הגדולים מדובר). ויש לזכור, שגם בטקסט המקראי, אליו מתייחסות הדרשות הללו, מסופר על „מלאך המשחית", „מלאך ה'", „חרב מלאך ה'" ואין כל אזכור ל„מלאך המוות" (ראה לעיל הערה 1). כך שהדעת נותנת, שהמסורת הקדומה על המלאך המשחית בעם בימי דוד לא זיהתה אותו כמלאך המוות. (והיא המסורת שנשתמרה בפרקי דר"א ובשאר המדרשים). והמסורת שלפנינו בסדר אליהו רבה, שממנה משתמע שמיתת הגדולים באותו אירוע נמסרה לו, אינה אלא מסורת מאוחרת, המושפעת מן המפנה שחל במעמדו של מלאך המוות. זאת ועוד, אפשר שלא

יש חומר ברור ומפורש המפקיע את מיתת החכמים והצדיקים מידיה של מלאך המוות. כך למשל, אף שמדרש קהלת רבה מייחס את מיתת הבריות למלאך המוות,³⁰ מתואר במדרש זה (ג, ב) מפגש בין רבי שמעון בן חלפתא לבין „שליחהון דברייתא“ הוא מלאך המוות,³¹ שבו סיפר לו המלאך על פרקו של תינוק פלוני, ולבקשת רבי שמעון: „חייך, דאת מחמי לי פיתקי“ תשובת המלאך היתה: „לית אנא שליט על דידך ולא על דלחברך“³² או למשל, בסגנון אחר נאמר בשיר השירים רבה (א, פס' ב, אות טז):

ורבנין אמרין עתידין נפשיהון של אלו לינטל בנשיקה. א"ר עזריה: מצאנו שנפשו של אהרן לא נטלה אלא בנשיקה – הה"ד (במדבר לג, לח): ויעל אהרן הכהן אל הר ההר על פי ה' וימת שם. ונפשו של משה מנין – שנא' (דברים לד, ה): וימת שם משה עבד ה' על פי ה'. מרים מנין – דכתיב (במדבר כ, א): ותמת שם מרים, מה שם שנאמר להלן על פי ה' אף כאן כן, אלא שגנאי לפרשו. ושאר כל הצדיקים מנין – שנאמר (שיר השירים א, ב): ישקני מנשיקות פיהו.

הנה כי כן, אם מדרש קהלת רבה הפקיע את מיתת החכמים מידי מלאך המוות, הרי ששיר השירים רבה „משלים את התמונה“ וקובע שמיתתם בידי הקב"ה עצמו – מיתת נשיקה, ובזאת הוא בעצם שב, בסגנון דומה, על הקביעה שבמדרשי ההלכה (לעיל סע' א).

מדרשי האגדה המאוחרים (750 ואילך). גם במדרשי האגדה השייכים לתקופה המאוחרת, לגוניהם ולסוגיהם, ניכר הדבר שהם משמרים את הגישה האמורה, ואף הם מבטאים אותה במובלע³³ ובמפורש.³⁴ אמנם, אם במדרשי האגדה הקדומים אפשר לדבר על עמדה אחת ואחידה, המשותפת לכל הקבצים והחיבורים, הרי שבמדרשים המאוחרים אפשר להבחין גם בעמדה אחרת, לפיה מיתת הצדיק אכן מסורה למלאך המוות.

אולם, יש לשים לב לעובדה, כי ביטוי ברור ומפורש לעמדה האחרת הזו מופיע בדרשה אחת בלבד הנמצאת במדרש תהלים.³⁵ נוסף לה, מצאנו עוד ארבע דרשות, שאולי גם הן

30 ראה לדוגמה: קהלת רבה, ג, ב, „עת ללדת וגו' – ואפילו מלאך המות נעשה קטיגור שלה“ שם, ח, ח; „אין אדם שליט ברוח של מלאך המות לכלותו ממנו“ ועוד שם, וראה גם לעיל הערה 28, דוגמה 2.

31 כעולה מן המסופר שם, וכן מן המקבילה בדברים רבה, ט, א, שם הוא נקרא גם „מלאך המות“ וגם „שלוחו של מקום“ על הבנה זו ועל היחס בין החומר המובא כאן בקהלת רבה (ג, ב) למקבילותיו, ראה: מנחם הירשמן, „לדרך השימוש של מדרש קהלת רבה במקורותיו“ תעודה יא (תשנ"ו) 183–186 (להלן: הירשמן, „לדרך השימוש“). על הכינוי הייחודי למלאך המוות „שלוחהון דברייתא“ העיר מ"ב לרנר (שם, 186, הערה 24): „קרב לורדאי שהגרסה המקורית המשתקפת כאן ובתרגומים לעברית היא שלוחה (= שלוחיה) דברייא, כלומר „שלוחו של הבורא“, שנשתבשה לשלוחא דברייתא“

32 כעין זה בכת"י וטיקן 291: „לית אנא שליט על דידך ועל עלמא דחברך“ ראה: הירשמן, מדרש קהלת רבה, ח"ג, 229.

33 כדרך שהוסבר ביטוי זה לעיל ביחס למדרשי האגדה הקדומים. לביטוי הזה ייתכן שיש לצרף גם את הדרשה המובאת בתנחומא ויחי, ד, ובמדרש תהלים (מהד' בוכר [ווילנא]: דפוס האלמנה והאחים ראם, תרנ"א) מזמור קטז, ו, עמ' 477 שקשה להקב"ה להמית את הצדיקים עד שהם תובעים „מיתה בפיהן“ שכן, אפשר שגם בעל דרשה זו סבור שמיתת הצדיקים היא „על פי ה'“ בנשיקה, אלא שלדעתו גם הצדיקים נדרשים לשם כך ל„ביטוי שפתים“

34 למשל: דברים רבה, ט, א (המסופר על ר"ש בן חלפתא. וראה לעיל הערה 31); מדרש ילמדנו שהובא בילקוט שמעוני (מסעי, רמז תשפז): „באותה שעה השיבו הקב"ה... וכשם שלא שלט מלאך המות באהרן אלא בנשיקה, כך אתה לא ישלוט כך מלאך המות ותפטר בנשיקה. שנאמר על פי ה', מיד נתישבה דעתו של משה. אשריהם הצדיקים שהקב"ה בעצמו מאספם, שנאמר וכבוד ה' יאספם“

35 כך נאמר במדרש תהלים (מהד' בוכר, מזמור יא, ו, עמ' 102): „רבוזמן שיגיע קצו ליפטר מן העולם, בא מלאך המות לטול נשמתו של אדם, הנשמה דומה כמין קנה מלא דם, ויש לה קנים קטנים שהן מתפורין

(ואילך), מצאנו ביטוי לעמדה זו, ואף הוא, כפי שנוכחנו לראות, דל וזעום.³⁹ על עניין זה – על החומר המצוי בבבלי ועל עמדתו בנוגע למלאך המוות והמתת החכמים נעמוד בסעיפים הבאים.

ג. בברייתות שבבבלי ובמדרשות ובדרשות האמוראיות⁴⁰

אין עמדה שונה ביחס למלאך המוות

בטרם נתייחס לחומר שבתלמוד הבבלי, עלינו להבהיר, כי אנו כאן אווזים בגישה המחקרית המתונה,⁴¹ המבחינה בשלוש שכבות של חומר בבבלי: חומר תנאי, חומר אמוראי וחומר

„תלמוד על פה לתלמוד כתוב“, ספר השנה של אוניברסיטת בר-אילן ל-ל"א (תשס"ו) במיוחד 60–67, והערה 43 שם.

ואמנם, אנו מודעים לכך שגם חיבורים מדרשיים מאוחרים יכולים לשמר מסורות ולשקף גישות הקדומות מאות בשנים לזמן עריכתם (ראה לדוגמה: מרק ברגמן, „מסורות ומקורות קדומים בספרות תנחומא-ילמדנו“, תרביץ ס [תשנ"א] 269–274; ברגמן, ספרות תנחומא-ילמדנו [ניו ג'רזי: הוצאת גורגיאס, תשס"ד] במיוחד 173–188). אכן, הואיל והגישה הקדומה ביחס למלאך המוות היתה שאין לו שליטה על פטירת החכמים, וגישה זו הותירה את חותמה גם במדרשים המאוחרים, כמדרשי תנחומא-ילמדנו, פרקי דר' אסדר אליהו רבה, ובמרבית החומר שבהם, משום כך, רבה הסכירות, שאת החריגות הבודדות מן הגישה הזו יש לשייך לרובד המאוחר במדרשים אלו.

זאת ועוד, באותה דרשה עצמה שבמדרש תהלים, הדרשה היחידה אשר משקפת את התפיסה השונה לגבי מלאך המוות (לעיל הערה 35), ניכרת בה השפעת הבבלי בפרטים נוספים. שכן, לתיאור מיתת הצדיק המופיע במדרש זה יש שתי מקבילות בבבלי. האחת, בברכות ח ע"א. שם נאמר שהחסיד מתפלל שיזכה למיתה נוחה, ושהמיתה הנוחה מכולן היא נשיקה, וש „נשיקה דמיא כמשחל בניתא מחלכא“ ומשתמע שזו המיתה, לה זוכה החסיד. השניה, בבבלי מו"ק כח ע"א. שם מסופר על רב נחמן שנפטר על ידי מלאך המוות, ושלא חש צער במיתתו, לפי שיציאת נשמתו היתה, „כמישחל בניתא מחלכא“ ומנגד, את המיתה הקשה שבכולן, מתאר הבבלי, בברכות שם, שהיא, „כפיטורי בפי ושט“ נראה אפוא, שמדרש תהלים זה כבר הכיר את האמור בבבלי, שמיתת הצדיק מתרחשת באופן נוח וקל, ולכן אף הוא תיאר, „כאילו מושך חוט מן החלב“ ומנגד, את המיתה הקשה ביותר, מייחס מדרש תהלים לאופן מיתת הרשע, ומתארה כלשון שמתוארת בבבלי, „כפיטורי בפי ושט“ מעתה, יש רגלים לדבר, כי גם בעניין מבצע המיתה, לצדיק כמו לרשע, הושפע מדרש תהלים מן המובא בתלמוד הבבלי (ובכמה מקומות) ולפיכך קבע שהוא מלאך המוות! וראה עוד להלן סעיפים ד–ה על תפיסת הבבלי.

על פי בדיקה ראשונית באמצעות פרויקט השו"ת (של אוניברסיטת בר-אילן) עולה כי בכלל מדרשי האגדה הנידונים כאן (לעיל הערה 24) יש כמאה חמישים וחמשה אזכורים של מלאך המוות (כולל מקבילות של דרשות ושל מוטיבים בין המדרשים השונים ובאותם מדרשים עצמם). אף שמספר זה לא נותן תמונה מדויקת של מספר הדרשות המתייחסות למלאך המוות, ברור הדבר כי באופן יחסי, מספר הדרשות המשקפות עמדה שונה, שכאמור בפנים אינו עולה על חמש, הוא מועט ביותר.

תודתי נתונה למכון התלמוד הישראלי השלם של יד הרב הרצוג בירושלים ת"ח, על השימוש באוצר חילופי הנוסחאות לבבלי המסודרים במכון. הציטוטים במאמרנו מן הבבלי יהיו מן הדפוס המצוי, דפוס ילנה, וההתייחסויות לשינויי נוסח, בגוף המאמר ובהערות, יהיו רק לאותם שינויים הנוגעים לענינים הנידונים במחקרנו. כמו כן, כאשר אנו כותבים, „ברוב כתבי היד“ כוונתנו לכתבי היד המצויים במכון. על גישה זו, ראה בעיקר: שמא יהודה פרידמן, „פרק האשה רבה בבבלי בצירוף מבוא כללי על דרך

חקר הסוגיא“ בתוך חיים זלמן דימיטריובסקי, עורך, מחקרים ומקורות: מאסף למדעי היהדות (ב' כרכים: ניו-יורק: בית המדרש לרבנים באמריקה, תשל"ח-תש"ן) א: 283–313; שמא יהודה פרידמן, תלמוד ערוך: פרק השוכר את האומנין (ב' כרכים: ניו-יורק וירושלים: בית המדרש לרבנים באמריקה, תשנ"א–תשנ"ז) ב, הנוסח, 7–23; דוד הלבני, בהקדמותיו ומבואותיו לכרכים של ספרו מקורות ומסורות, החל מכרך ב, מיומא עד חגיגה (ירושלים: הוצאת מאגנס, תשל"ה) 1–12, וכלה בכרך ז, מסכת בבא בתרא (ירושלים: הוצאת מאגנס, תשס"ח) 1–148; (ועתה, אוגוד כל המבואות הללו ונדפסו יחד בספר: מבואות למקורות ומסורות, עיונים בהתהוות התלמוד (ירושלים: הוצאת מאגנס, תשס"ט). וראה גם: David Halivni

לדעתנו, „עמדת התלמוד הבבלי“ היא שנתנה כאן את אותותיה, ולכן רק במדרשים המאוחרים,³⁸ שנערכו בזמן התפשטות הבבלי ואשר היו חשופים להשפעתו (מאות ח'–ט')

במסורת מאוחרת מדובר, אלא בתוספת מאוחרת של המילה „המות“ שכן, בכל האמור בסדר אליהו רבה יש רק משפט אחד המשלב את מלאך המוות לסיפור, והוא: „ראה דוד חרבו של מלאך המות“ (אבל קודם לכן נאמר: „ירד מלאך משמי מרום“ ולא נאמר שהיה זה מלאך המוות). והנה, במקבילה שבפרקי דר״א (מהר׳ היגער, פרק מב) נאמר: „ראה דוד את חרבו של מלאך!“ אפשרי בהחלט שהמילה „מות“ במשפט זה שבסדר אליהו רבה אינה אלא תוספת מאוחרת (וכמובן תוספת שגויה) של מעתיקים, וכפי שאירע בפרקי דר״א, שלעומת הנוסח המשוער שמהר׳ היגער, הרי שבנוסח הנדרס (פרק מג) כבר נאמר: „ראה דוד חרבו של מלאך המות!“ (לשם הדיוק יש לציין, כי הנוסח בפרקי דר״א מהר׳ היגער, שהוזכרנו, הוא לפי שני כתבי יד מתוך שלושה שהיו לפניו. ראה: מיכאל היגער, „פרקי דר״א אליעזר“ חורב, ח [תש״ד] עמ' 82; הנ״ל, חורב, י [תש״ח] עמ' 286, פרק מב, הערה 40. אכן, בעניין הזה, אנו סבורים, כי „טובים השנים מן האחד“)

2. בתנחומא הנדרס, חקת, יז (וכן במקבילות: תנחומא כובר, חקת, מא; כמדבר רבה, יט, כ), ביחס לפטירת אהרן, מסופר: „כיון שירדו משה ואלעזר מן ההר נתקבצו כל הקהל עליהם אמרו להם היכן אהרן, אמרו להם מת, אמרו להם היאך מלאך המות יכול לפגוע בו, אדם שעמד במלאך המות ועצרו, דכתיב (במ׳ יז, יג): ויעמוד בין המתים ובין החיים ותעצר הנגפה. אם אתם מביאין אותו מוטב, ואם לאו נסקול אתכם. באותה שעה עמד משה בתפלה... מיד פתח הקב״ה את המערה והראה להם, שנאמר ויראו כל העדה כי גוע אהרן“ כעין דרשה זו מופיע גם במדרש אגדה על חמשה הומיני תורה (מהר׳ בובר [ווינץ: דפוס אברהם פאנטא, תרנ״ד] חלק שני, חקת, 126); „ירד משה ואלעזר מן ההר. אמרו ישראל היכן אהרן, אמר להם כבר מת, ולא היו מאמינים אליו, אמרו לו האיש שעצר מלאך המות ולא היה מניחו ליגוף את העם, עתה שלט בו מלאך המות, ולא היו מאמינים, עד שהראה להם הקב״ה מטתו“ מן המדרשים הללו משתמע, לכאורה, שמיתת אהרן נמסרה למלאך המוות, ונמצא שמדרשים אלו סבורים שמיתת הגדולים מסורה לו. אכן, יש לשים לב לעובדה, שמלאך המוות לא משולב לסיפור הפטירה של אהרן, אלא לדברי העם בלבד. לפיכך, אין כל מניעה לומר, שגם לפי מדרשים אלו, מיתת אהרן היתה ע״י הקב״ה לבדו, וכך אכן מפורש במדרש אגדה (שם), ש״מ בנשיקה“ אלא שבעל הדרשה, משיקולים שלו, שם בפי העם את התמיהה „היאך מלאך המות יכול לפגוע בו“ (וכן את המשפט הדומה לו במדרש אגדה) – אולי משום שהעם לא מדקדק בהיקף שליטתו של מלאך המוות, אולי משום שרצה להדגיש את כוחו של אהרן מול המוות באמצעות עלייתו על מלאך המוות („אדם שעמד במלאך המות ועצרו“). אמנם, מלבד האמור, יש לתת את הדעת לאפשרות, שמדרשים אלו, בסגנונם זה, הינם פיתוח מאוחר של המסורות השייכות לסיפור פטירת אהרן (על מסורות אלו ועל המוטיבים השונים שבהם, ראה גם: שוורצבאום, פולקלור יהודי, 31–44 [אנגלית]). שכן, מתברר שלא רק במדרשי ההלכה (לעיל הערה 7), לא הוזכר כלל מלאך המות בנוגע לפטירת אהרן, אלא הוא גם נעדר ממסורות רבות הנוגעות לפטירתו במדרשי האגדה (כמו שלושת המדרשים הנזכרים להלן). זאת ועוד, לסיפור הנידון, על ירידת משה ואלעזר מן ההר ודברי העם אליהם, יש שלוש מקבילות במדרשי ילמדנו, שמכולן נעדר מלאך המוות, ובשניים מהן אף מודגש שה' הוא שהמיתו. ראה: ילקוט שמעוני, חקת, רמז תשסד, אות צח, בשם מדרש ילמדנו („דרך שמים מת“); שם, מסעי, רמז תשפז, אות כט, בשם מדרש ילמדנו („גנוז הקב״ה“); ילקוט תלמוד תורה לבמדבר דברים, קנח, נדרס כחלק העברי בתוך: Jacob Mann and Isaiah Sonne, eds., *The Bible as Read and Preached in the Old Synagogue* (2 vols.; Cincinnati: The Mann-Sonne Publication Committee, 1966) 2:158 (Heb.). נראה אפוא, שמדרשי ילמדנו אלו, המתעלמים ממלאך המוות כסיפור פטירת אהרן, הם שמשקפים את המסורת הארץ-ישראלית הקדומה (ברוח הגישה התנאית), ואילו אותם מדרשי תנחומא ומדרש אגדה שביטאו את מלאך המוות לסיפור הם שייכים לזמן מאוחר יותר, והם כבר מושפעים מן התפיסה המאוחרת שמצאה את ביטוייה בתלמוד הבבלי (להלן סע' ד-ה). על תופעה זו, שהמדרשים המאוחרים מציעים ניסוחים מחודשים ועיבודים של מקורות קדומים (כפי שהצענו בהערה זו ובקודמתה) כבר העמידנו החוקרים. ראה למשל: יעקב אלבוים, „בין עריכה לשיכתוב: לאופיה של הספרות המדרשית המאוחרת“ דברי הקונגרס העולמי התשיעי למדעי היהדות (תשמ״ה) ג: 57–62 (להלן: אלבוים, „לאופיה“).

38 וזה אחד ממאפייני המדרש המאוחר – השימוש האפשרי בבבלי. ראה: אלבוים, „לאופיה“ 57. על התפשטות הבבלי, כספר כתוב, כבבל ומחוצה לה אל הפזורה היהודית, ראה לאחרונה: נחמן דנציג,

שיש בכבלי לא מעט ברייתות אמוראיות, ולעתים, אף בתר-אמוראיות – ואף הן מנוסחות ומסוגגנות כ„ברייטא תנאית“ לכל דבר. (ברייטות אלו מכונות: „fictitious baraitot“, או: „pseudo-baraitot“). כך שבהעדר סימני זיהוי מובהקים שיעידו על מוצאן התנאי של הברייתות, קיימת האפשרות שלפנינו ברייתות בבבלי, בתר-תנאיות, ומבריייתות שכאלו, כמובן, אין להסיק וללמוד על עולמם של התנאים ותקופתם.

אולם, בדיקה מקיפה שערכנו לכל הברייתות שבבבלי השייכות לנושא מחקרנו העלתה שכולן שומרות על מסגרת כללית אחידה בנוגע למלאך המוות, ואין בהן נקיטת עמדה שונה מזו שהכרנו עד כה (למעט חריגה אחת להלן, 3), וכפי שנבהיר עתה:⁴³

1. יש בבבלי מספר ברייתות המתייחסות באופן מפורש לפעילותו של מלאך המוות, כוחו ושליטתו, אבל הן אינן מעניקות לו עליונות על החכמים. אדרבה, בולטת לעין העובדה שרוב הברייתות מבליטות צדדים חלשים במלאך המוות, וחלקן אף מספקות עצות לכלל הבריות היאך להישמר מפניו.⁴⁴

2. יותר מכך, יש בבבלי מספר ברייתות המתייחסות למוות, אשר מגוללות סיפורי פטירה של תנאים מפורסמים, ולעתים אף בהרחבה רבה,⁴⁵ ועם זאת, בכל הסיפורים הללו אין ולא אזכור בודד של מלאך המוות! נמצא, שגם אם ברייתות אגדיות אלו, או חלקן, חלו בהן ידיים מאוחרות, או אף מוצאן בתר-תנאי(!), הרי שהן הקפידו לשמור, או שלא לערער, על

התנאים, ראה: יעקב נחום הלוי אפשטיין, מבוא לנוסח המשנה (ב' כרכים; ירושלים: הוצאת מאגנס, תשס"א) א:171-174; תנן אלבק, מחקרים בברייטא ותוספתא ויחסן לתלמוד (ירושלים: מוסד הרב קוק, תש"ל) 53-60; אלבק, מבוא לתלמודים (תל-אביב: הוצאת דביר, תשמ"ז) 47-50 (להלן: אלבק, מבוא לתלמודים). וראה גם: Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: John Hopkins Univ. Press, 1999) 261-62 „סיפורים תלמודיים“ Louis (להלן: רובינשטיין, „סיפורים תלמודיים“) 42 (1971) 185-196 *HUCA*. Jacobs, „Are There Fictitious Baraitot in the Babylonian Talmud?“ *EncJud* (2nd ed., 2007) 3:124-28. ולאחרונה: Stephen G. Wald, „Baraita, Baraitot“, *EncJud* (2nd ed., 2007) 3:124-28.

ראה לעיל הערה 41, על עמדתנו ביחס לכל הברייתות הללו. 43

אלו הן הברייתות שבבבלי: ברכות ד ע"ב; סוטה מו ע"ב; ב"ק ס ע"ב (לשלוש אלו נתייחס בהמשך ההערה); ב"ב יז ע"א (נדרן בה להלן כפנים); ע"ז ה ע"א (ואשר מובא שם מקביל למכילתא דר"י, לעיל הערה 6); ע"ז כ ע"ב (על זיהויה כברייתא. ראה: מיכאל היגער, מסכת שמחות [ניו-יורק: הוצאת „בלוך תרצ"א] ברייתות מאכל רבתי, 252; היגער, אוצר הברייתות [י' חלקים; ניו-יורק: הוצאת „דבי רבנן“ דפוס האחים שולזינגר, תרצ"ח-תש"ח] ט:349, אות תקלז). וראה גם להלן הערה 68.

על צדדים חלשים במלאך המוות, ראה: ברכות ד ע"ב, שם מתייחסת הברייתא למהירות מעופם של כמה מלאכים וקובעת שמלאך המוות הוא האיטי שבכולם – „ומלאך המות בשמונה“; סוטה מו ע"ב – „היא לזו... ואף מלאך המות אין לו רשות לעבור בה“ על עצות היאך להישמר מפני מלאך המוות, ראה: ב"ק ס ע"ב; „ת"ר: דבר בעיר – אל יהלך אדם באמצע הדרך, מפני שמלאך המות מהלך באמצע הדרכים“; „ת"ר: דבר בעיר – אל יכנס אדם יחיד לבית הכנסת, שמלאך המות מפקיד שם כליו“; „ת"ר: כלבים בוכים – מלאך המות בא לעיר“ מסמכות ברייתא זו, האחרונה, לקודמתיה נראה, שגם היא מספקת מידע שיש בו כדי לסייע להימלט מפגיעת המלאך.

כמו: פטירת רבן יוחנן בן זכאי (ברכות כח ע"ב); פטירת רבי עקיבא (שם סא ע"ב); פטירת רבי (כתובות קג ע"א). וסיפורים קצרים, כמו: פטירת רבי יהושע בן קרחה (מגילה כח ע"א); פטירת רבי יוסי בן קסמה (סנהדרין צח ע"א), ויש עוד. רבים מן הסיפורים הללו הם סיפורי צוואות והדרכות של התנאים הנפטרים לתלמידיהם. על סיפורים אלו, מקבילותיהם ומאפייניהם, ראה: Anthony J. Saldarini, „Last Words and Deathbed Scenes in Rabbinic Literature“, *JQR* 68 (1977) 28-45 Neusner, „Death-Scenes and Farewell Stories: An Aspect of the Master-Discipline Relationship in Mark and in Some Talmudic Tales“, *HTR* 79 (1986) 187-97 Jonathan Neumann, „Near Death Experiences in Judaic Literature“, *Journal of Psychology and Judaism* 14 (1990) 234-35.

בתר-אמוראי. על ההבחנה הזו מתבססת הערכתנו, שתובהה בסעיפים הבאים – כי לעומת החומר התנאי והאמוראי שבבבלי, ששימר את העמדה הקדומה ביחס למלאך המוות, הרי שבחומר הבתר-אמוראי חל מפנה במעמדו ובהיקף שליטתו.

החומר התנאי שבבבלי. בדברנו על חומר תנאי בבבלי, בנידון כאן, כוונתנו לברייתות. אכן, רוב הברייתות המתייחסות למוות ולמלאך המוות הן אנונימיות, ואינן נמסרות בשמו של חכם זה או אחר. פרט זה הוא משמעותי, משום שלא מעט חוקרים כבר העמידו על כך,⁴²

Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law (Cambridge: Harvard Univ. Press, 1986) 66–104. וראה גם מאמריו של הלבני שצוינו להלן הערה 73. אכן, יש האוחזים בגישה רדיקלית וסבורים שהחומר שבבבלי משקף רק את סוף תקופת עריכתו. לדעתם, אין אפשרות להוציא מן הבבלי ידיעות של ממש או מסקנות בנוגע לעולמם של התנאים והאמוראים ותקופתם, אלא בנוגע לזמן סוף עריכתו בלבד – התקופה הבתר-אמוראית. תומכה המובהק של גישה זו הוא יעקב ניונר, והוא פרסמה והבהירה באין ספור מאמרים וספרים, ראה לדוגמה: Jacob Neusner, *The Bavl's One Voice: Types and Forms of Analytical Discourse and Their Fixed Order of Appearance* (Atlanta, Georgia: Scholars Press, 1991); and his *Sources and Traditions: Types of Compositions in the Talmud of Babylonia* (Atlanta, Georgia: Scholars Press, 1992). יש להוסיף, כי בשתי הגישות הללו וענייניהם כבר דנו חוקרים רבים בדור האחרון, והנטייה המחקרית היא להעדיף את הגישה המתונה. לסיכום הנושא עם הפניות רבות לספרות המחקרית, ראה לאחרונה: Richard L. Kalmin, "The Formation and Character of the Babylonian Talmud," in Steven T. Katz, ed., *The Cambridge History of Judaism: Vol. 4, The Late Roman-Rabbinic Period* (Cambridge: Cambridge Univ. Press, 2006) 843–47.

לפי גישה זו, „המתונה“ אפשר לייחס אמינות, באופן עקרוני, למסורות תנאיות ולמסורות אמוראיות שבבבלי, אלא שנדרשת זהירות בדבר, ויש לבדוק כל מקרה לגופו. אכן, במסורות הנידונות כאן ביחס למלאך המוות, שהן ברייתות, מימרות, ודרשות, אין כל מניעה מלייחס להן אמינות. 1. באשר לברייתות – נכון הוא שאין לברייתות שבבבלי, למעט אחת, אף מקבילה, לא בקבצים התנאיים ולא בירושלמי ובמדרשי האגדה, ומבחינה זו אין לנו אפשרות לעמוד על גלגולי מסירתן. אבל, אותה ברייתא יחידה (ע"ז ה ע"א, ראה להלן הערה 44) שיש לה מקבילה שומרת על תוכן זהה למקבילתה. כמו כן, שאר כל הברייתות הן קצרות ופסקניות, וככאלו, הן אינן חשודות בעיבודים ופיתוחים מאוחרים. ובעיקר, החומר שעל מלאך המוות בברייתות אלו עולה בקנה אחד עם היחס למלאך זה ולפעילותו בכלל החומר שמדרשי ההלכה ובכלל החומר התנאי שנשתקע בירושלמי ובמדרשי האגדה. לפיכך, אנו נוטים לראות את הברייתות הללו כמשקפות חומר תנאי – ואף אם לא בניסוחן כפי שהוא לפנינו בבבלי, כי אז, לכל הפחות, בתכניהם. זאת למעט ברייתא אחת חריגה (ב"ב יז ע"א), שתידון להלן בפנים בסעיף זה. אמנם, כל שאמרנו הוא ביחס לברייתות הקצרות, המצוינות להלן בהערה 44. לגבי הברייתות הסיפוריות, הארוכות והמפותחות, הנזכרות להלן בהערה 45, שם המצב שונה, ואפשר בהחלט שחלו בהן ידיים מאוחרות, או שמוצאן אף בתר-תנאי. אבל, יש לזכור ולשים לב, שאין בברייתות הללו חומר על מלאך המוות. כך שאין בהן כדי לשלול או לערער את מסקנותינו בנוגע למלאך זה. 2. באשר למימרות ולדרשות – אשר אמרנו ביחס לברייתות הולם גם כלפיהן. אין למימרות ולדרשות הללו מקבילות שמהן ניתן להתחקות על גלגולי מסירתן. אולם, הואיל ורובן קצרות בניסוחן, ומאחר שהיחס כלפי מלאך המוות המשתקף מכולן אינו עומד בניגוד ליחס האמוראי שבירושלמי ובמדרשי האגדה, דעתנו נוטה לראות בו כמשקף חומר אמוראי, ואם לא בניסוחיו או בשמות אומריו (בפרט בחומר המיוחס לאמוראי א"י), כי אז, לכל הפחות בתכניו.

אמנם, גם לגישה המחקרית הרדיקלית, הסבורה שהחומר שבבבלי משקף רק את סוף תקופת עריכתו והיא בתר-אמוראית, שלפיה אין מקום לכל הדיון המוצע בסעיפים הבאים, עדיין תהיה למחקרנו זה תרומה, ולו בעצם ההבחנה, שבתלמוד הבבלי חל מפנה במעמדו של מלאך המוות – ובניגוד לעמדת חכמי ארץ ישראל (כעולה ממדרשי ההלכה, מהירושלמי וממדרשי האגדה). עמדתם של חכמי בבל היתה, שמיתת החכמים מסורה למלאך זה.

42 על תופעה זו, שיש בבבלי חומר המנוסח כברייתא, ולאמתו של דבר הוא חומר בבלי מאוחר לימי

אכן, גם מי שיכרך את ההבנה הראשונה, שלפיה משתמע מן הברייתא כי שאר כל הגדולים והצדיקים מומתים ע"י מלאך המוות, עליו להודות שברייתא זו ייחודית וחרגה בתפיסה שהיא מביעה, שהרי אין לה כל מקבילה (גם לא לתוכנה) בספרות התנאית, וככזו, היא מעוררת חשד לגבי מוצאה התנאי. לשון אחר: אפשר שלפנינו ברייתא בבליית מאוחרת, שמולדתה באמת בתפיסה (שתוצע להן סע' ד), שמלאך המוות הוא שממית את החכמים, והיא באה להצביע על כמה מגדולי האומה שיצאו מכלל זה.

החומר האמוראי שבבבלי. בדברנו על חומר אמוראי, בנידון כאן, כוונתנו למימרות ודרשות הנמסרות בשם אמוראים.⁴⁹ יש בבבלי מספר מימרות ודרשות הנמסרות בשם אמוראים, למן הדור הראשון ועד הדור הרביעי, המתייחסות למלאך המוות.⁵⁰ אולם, הן בחומר המיוחס לאמוראי ארץ ישראל הן בחומר המיוחס לאמוראי בבל אין כל שינוי ביחס לכוחו של מלאך זה מול גדולי הדורות והחכמים. אדרבה, בחלק מן החומר הזה מובלטים צדדיו החלשים של המלאך – וזאת בעצות ובאמצעים שונים לכלל הבריות כיצד להינצל ממנו.⁵¹ אמנם, אנו רואים לנכון להתייחס כאן לשתי דרשות ולשתי מימרות, וזאת כדי להבהיר,

49 ראה לעיל הערה 41, על עמדתנו ביחס לחומר האמוראי הזה.

50 יש בבבלי התייחסות יחידאית לפסוק (היחיד) במקרא בו נזכר ביטוי הקרוב למלאך המוות: מלאכי מות (ראה לעיל הערה 1). ומעניין לראות, שהתייחסות זו משתלבת יפה לתמונה העולה מן החומר האמוראי העוסק במפורש במלאך המוות. כך נאמר בבבא בתרא קטז ע"א: "דרש ר' פנחס בר חמא: כל שיש לו חולה בתוך ביתו, ילך אצל חכם ויבקש עליו רחמים, שנאמר: חזות מלך מלאכי מות ואיש חכם יכפרנה" דומה, שדרשה אמוראית זו, אף שאיננה עוסקת במפורש במלאך המוות אלא ב"מלאכי מוות" מרמזת במובלע על עליונותו של החכם גם על מלאך זה.

51 הדבר בולט בעיקר בדברי רבי יהושע בן לוי. ראה: שבת פט ע"א, על הקטורת שמסר מלאך המוות למשה כאמצעי לבלום אותו, וראה: ברכות נא ע"א, על עצות שונות שסיפק מלאך המוות לריב"ל, כדרך לבריות להישמר מפגיעתו.

דומה, שלמסגרת זו (של עצות להינצל ממלאך המוות) יש לצרף גם את מימרת ריש לקיש המפורסמת, בב"ב טז ע"א: "הוא שטן, הוא יצר הרע, הוא מלאך המוות" אלא שתחילה עלינו להקדים ולומר, כי בפירוש מימרא זו נחלקו מלומדים וחוקרים. בספרות הרבנית נטו להבניה כזוהי המאחד את שלוש הפונקציות הללו. (ראה למשל: שו"ת ר' אליהו מזרחי: ירושלים: הוצאת ספרים, "דרום" תרצ"ח) סי' מב, דף קיא ע"ב, ר' שמואל יפה אשכנזי, יפה תואר לבראשית רבה, ט, יב (מהד' פיורדא [תנ"ב] דף סו ע"ג, ד"ה זה); ר' דוד ליב צינץ, גדולת יהונתן [על ר"י אייבשיץ; ב' חלקים, פיעטרקוב: דפוס קאפעלמן, תר"ץ-תרצ"ד] ב: 263; מהר"ז, שמות רבה, ל, יז, ד"ה והוא הורגו). להבנה זו היו שותפים גם חלק מן החוקרים. ראה למשל: W. Hirsch, *Rabbinic Psychology* (London: St. Ann's Press, 1947) 240 (וכמהדורה העברית, הפסיכולוגיה בספרותנו העתיקה [תל-אביב: דביר, תשי"ז] 169, תרגמה שושנה חן-זהבי כך: "מלאך המות, הוא השטן, הוא יצר הרע; בהפיכת הסדר במימרא לא הותירה מקום לספק ששלוש הדמויות אחת הן"); שולמית טוב, "רבי שמעון בן לקיש" מבוע כט (תשנ"ו) 70. אבל, ניתן לפרש שאין כוונת ריש לקיש לאחד את הדמויות לאחת, אלא רק לתאר את הקשר שבין שלושן. לאמור: השטן מעמיד בפני האדם פיתויים, ועל ידי כך מתגרה בו באדם יצרו הרע, ואם יכנע האדם ליצרו ויחטא, או אז יענש במיתה ע"י מלאך המוות. לפי זה, המשוואה שהציב ר"ל מתארת בעצם פעולת שרשרת של שלוש פונקציות שונות. ראה בקצרה: Bernard Jacob Bamberger, *Fallen Angels* (Philadelphia: Jewish Publication Society of America, 1952) 95; ישראל תא שמע, "שטן" האנציקלופדיה העברית (תשל"ט) ל"א: 762. לדעתנו, המוצעת בסעיף זה, שלא חל מפנה ממשי במעמדו של מלאך המוות אלא בחומר הסתמי שבבבלי, נראה שיש לצדד דווקא בפירוש השני. שכן, קשה להניח, שאמורא מן הדורות הראשונים יציע מאמר המרומם את מלאך המוות ומחזקו, ויעניק לו סמכויות נוספות של שטן ויצר הרע. כאשר המגמה השלטת ביחס למלאך זה היא ניטרלית, ולבטח איננה חיזוקו. אכן, בין אם כוונת ריש לקיש לומר שאלו השלושה אינם אלא אחד, כפירוש הראשון, ובין אם כוונתו להצביע על קשר מסוים בפעילות השלושה,

מאפייני הגישה התנאית (הניכרת במדרשי ההלכה) ותפיסתה בנוגע למלאך המוות – שאין למלאך הזה כל חלק ושייכות בפטירת גדולי האומה וחכמיה.⁴⁶

3. אמנם, יש בבבלי ברייתא אחת, חריגה, שאנו רואים לנכון להעלותה לדיון. אנו מציעים כאן את הברייתא הזו יחד עם הקטע התלמודי הדן בה. כך נאמר בבבא בתרא יז ע"א:

תנו רבנן: ששה לא שלט בהן מלאך המות, ואלו הן: אברהם, יצחק ויעקב, משה, אהרן ומרים. אברהם, יצחק ויעקב, דכתיב בהו: בכל, מכל כל; משה, אהרן ומרים, דכתיב בהו (במ' לג, לח; דב' לד, ה): על פי ה'. והא מרים לא כתיב בה על פי ה'! אמר ר"א: מרים נמי בנשיקה מתה, דאתא שם שם ממש, ומפני מה לא נאמר בה על פי ה'? שגנאי הדבר לומר.

והנה, אם אמנם קביעתה המספרית של הברייתא „ששה לא שלט בהן מלאך המות” היא בדווקא, כי אז, בוקע ממנה קול חדש, המעצים את כוחו של מלאך המוות, שהרי משתמע במובלע מן הברייתא, שבפטירת שאר כל הגדולים והצדיקים מלאך המוות אכן שולט. אבל, אין כל מניעה לפרש,⁴⁷ שציון המספר בברייתא שלפנינו לא בא למעט צדיקים אחרים לגמרי, אלא להדגיש שיש הבדל מסוים בין המנויים בברייתא לבין האחרים, והוא: שלגבי ששת האישים המנויים, בשונה משאר כל הצדיקים, ניתן להוכיח מן המקרא שלא שלט בהם מלאך המוות, וכפי שסוגיית הבבלי טורחת לעשות.⁴⁸

מאחר שבכל החומר התנאי שבבבלי, למעט הברייתא הנזכרת, לא ניתן לאתר כל עמדה חדשה – לא בחומר המתייחס למלאך המוות מפורשות, ולבטח לא בשלל סיפורי הפטירה המתעלמים ממנו, ומאחר שגם בכל החומר האמוראי שבבבלי לא ניתן לאבחן כל מפנה במעמד המלאך (וכפי שיראה בפסקה הבאה), לדעתנו, יש וראוי לבכר את ההבנה השנייה שהצענו לברייתא הזאת.

46 דומה, שהד לתופעה זו – „הרחקת” מלאך המוות מתחום הפגיעה בחכמים – עולה גם מן הברייתא בחגיגה יד ע"ב. ברייתא זו מספרת על רבי אלעזר בן ערך שדרש במעשה מרכבה לפני רבו – רבן יוחנן בן זכאי, והיא מוסיפה ומספרת: „ירדה אש מן השמים וסיבבה כל האילנות שבשדה” ובהמשך: „נענה מלאך מן האש ואמר: הן הן מעשה המרכבה” והנה, בעוד שבדפוסים הבבלי וברוב כתבי היד הנוסח הוא: „נענה מלאך”, הרי שכתב”י מינכן הנוסח הוא: „נענה מלאך המות” גם בעלי התוספות הכירו נוסח כזה, כעולה מדבריהם (חגיגה שם): „נענה מלאך מתוך האש גרסינן, ולא גרסינן מלאך המות” אכן, לאור היעדרו של מלאך המוות מסיפורי הפטירה של התנאים (ואף בברייתות שניסוחן או מוצאן בתר-תנאי), קרוב לודאי, כי גם מברייתא זו הוא נעדר, שהרי בגדולי החכמים מדובר, וכאשר אש, שדרכה להזיק ולפגוע, מלהטט סביבם, לא מסתבר שלמלאך הזה יהיה בה חלק, דעתנו אפוא, שהנוסח התריג לברייתא זו הוא שיבוש (וכפי שהעירו בעלי התוספות), ולפי דרכנו למדרו, שהתופעה הספרותית שסקרנו בפנים יכולה לשמש ככלי עזר לקביעת הנוסח הראוי והמשובח – בנוגע לאזכורו של מלאך המוות.

47 וכדרכו של הבבלי (לעתים) – ביחס למספרים שמציינים משניות או ברייתות – לפרש שאין המספר בא למעט אחרים לגמרי, אלא לציין שיש הבדל מסוים בין אותם המנויים לבין אלו שאינם. ראה לדוגמה: מגילה יד ע"א (ביחס למנין מ"ח נביאים בברייתא); מכות י ע"א (ביחס למנין שש ערי מקלט במשנה).

48 יש לשים לב, כי שם בסוגיית הבבלי הובאו עוד כמה ברייתות שנקבו במספרים, כמו: „שלושה הטעימן הקב"ה בעוה"ז מעין העוה"ב”, „שלושה לא שלט בהן יצר הרע”, „שבעה לא שלט בהן רמה וחולעה” גם ביחס לברייתות אלו אין כל מניעה לומר, שבציינם מספרים (שבעה) לא באו לשלול אחרים, אלא ללמד מי הם האישים שלגביהם יש לכך סמך במקרא, וכפי שסתם התלמוד הביא סימוכין לכל שם ושם. שותף להבנה זו היה ר' יעקב עמדין, קולן של סופרים, נזיקין חלק א' (מהד' ישראל יוסף פרידמן [ירושלים: בית דפוס בלתי נודע, תשמ"ז] דף נט ע"ב), שכתב: „שבעה לא שלטה בהם חולעת – הני שבעה מגמ”. אבל ודאי מבלעדי אלה היו צדיקים בכל הדורות שלא שלטה בהם”

דרשה זו המיוחסת לרבי אלעזר, או לפי חלק מעדי הנוסח לרב יהודה בשם רב, קובעת שמיתת אבישי בן צרויה, "רב שבהם" נעשתה על ידי המלאך המשחית בעם. אכן. יש לשים לב, שאין התייחסות בדרשה זו למלאך המוות אלא למלאך.⁵⁷ פרט זה הוא משמעותי ביותר, משום שבכל החומר התנאי והאמוראי שבבבלי לא נזכר מלאך המוות בתואר "מלאך" סתם אלא בתואר "מלאך המוות" ברור אם כן, שבדרשה שלפנינו אין כל אמירה ביחס למלאך המוות, אלא כל מה שמסופר בה הוא שאבישי בן צרויה הומת על ידי מלאך!⁵⁸ אמנם, עדיין יש להבין מדוע באמת סבור האמורא במקור שלפנינו, שאבישי בן צרויה הומת על ידי מלאך, ולא הומת, כמקובל אצל צדיקים, על ידי הקב"ה בעצמו?⁵⁹ דומה, שמקור זה, המתייחס לשעת מגפה בעם, מצטרף לאשר אנו מוצאים כבר במקורות התנאיים, ויותר במקורות האמוראיים, שתפקידי ההשחחה וההמתה ההמונית נמסרים למלאכים, ולעתים ל"מלאכי השרת" או ל"מלאכי חבלה" ולעתים למלאך גבריאל, או ל"מלאך" סתם.⁶⁰

57 ראה ההערה הקודמת.

58 אכן, אפילו אם הדרשה שלפנינו היתה מייחסת את מיתת אבישי בן צרויה למלאך המוות עצמו, מה שכאמור אינו המקרה כאן, גם אז, לדעתנו, לא היתה בכך חריגה מן הגישה הכללית ביחס למלאך זה. שכן, בשעת המגיפה מתרבה כוחו של מלאך המוות, וכפי הנראה, אף נגד הצדיקים. על כוחו המתעצם של מלאך המוות בשעת המגיפה מלמדת ברייתא סתמית בבבלי (ברכות ד ע"ב), המתייחסת למהירות מעופם של מלאכים ממקום למקום, וקובעת שלמרות שדרך כלל "מלאך המות בשמנה" הרי ש"בשעת המגפה באחת" ולבריתא זו יש לצרף את זו השנויה במכילתא דר"י, מסכתא דפסחא, פרשה יא, 38 (ובבבלי, בבא קמא ס ע"א, משם האמורא רב יוסף): "ואתם לא תצאו איש מפתח ביתו עד בוקר" (שם יב, כב) – מגיד משנתה רשות למשחית לחבל אינו מבחין בין צדיק לרשע? אף שבריתא זו לא מתייחסת באופן מפורש למלאך המוות, יש ללמוד ממנה כי שעת הנגף היא חריגה, ובמהלכה יכול "המשחית" יהיה מי שיהיה, לפגוע גם בגדולים ובצדיקים. לאור המקורות הללו, הדעת נותנת, כי בשעת שמתעצם כוחו של מלאך המוות מבחינה כמותית, וניתנה לו הרשות להרבות כמספר הנפגעים, מתעצם כוחו גם מבחינה איכותית, ועתה בידו לפגוע גם באלו שמחוץ לתחום שליטתו, הם הצדיקים ואנשי המעלה. בעניין זה הולמים דבריו של כהן, "מוטיב-אינדקס" 126, שנאמרו ביחס לשעת המגיפה: As, things get bad, it gets easier for them to get even worse, i.e., the Angel of Death is allowed to operate more freely in dangerous situations" רבה הסבירות, שחופש הפעילות של מלאך המוות בשעת המגיפה יתבטא גם בפגיעה באלו שבדרך כלל אינם בשליטתו – הם הצדיקים, וכאמור. וראה בעניין זה גם לעיל הערה 37, סע' 1, בביאור המסופר בסדר אליהו רבה. ועל כל עניין המגיפה, ה"משחית" ראה גם ההערה הבאה.

59 שאלה אחרת, מהותית ביותר, היא למה בכלל הומת אבישי בן צרויה? כפי הנראה, פעל כאן העיקרון האמוראי (בבלי שבת, לג ע"ב): "צדיקים נתפסים על הדור" על עניין זה, שפעמים הרבה הצדיקים נפגעים ונענשים – בזמן, "שניתנה רשות למשחית", "בעידן ריתחא" ובנסיבות נוספות ואחרות, שהמשותף לכולם הוא שזכויותיהם לא מגינות עליהם – כבר עמד אלמן, בהרחבה רבה, במספר מחקרים. ראה לדוגמה: Yaakov Elman, "When Permission is Given: Aspects of Divine Providence," *Tradition* 24 (1989) 24-43. ועל מחקריו הנוספים, ראה להלן הערה 117.

60 על "מלאכי השרת" ראה למשל: מכילתא דר"י, מסכתא דריה בשלח, פרשה ב (מהד' האראוויטץ-רבינ, 94-95; על חלקם של מלאכי השרת בפגיעה בצבא המצרי בים סוף). ועוד שם, פרשה ה, 111. על "מלאכי חבלה" ראה למשל: שבת נה ע"א (לפי רב חסדא, ששת האנשים המתוארים ביחזקאל ט, ב, היו ששה מלאכי חבלה והוא נוקב בשמותם); שמות רבה, מד, ח (בשם ר' יצחק, מסופר על חמשה מלאכי חבלה, ונקובים בשם, שנשלחו לפגוע בעם ישראל בעקבות חטא העגל). על גבריאל, ראה למשל: סנהדרין צה ע"ב (לפי רבי אליעזר בנו של ר"י הגלילי ורשב"י, "מלאך ה'" שהכה במחנה אשור היה גבריאל); בראשית רבה, נא, ב (לפי ר' יהודה ב"ר סימון הפיכת סדום נעשתה ע"י גבריאל); איכה רבה, ב, ג (לפי רבי יוחנן המלאך המשחית בחורבן ירושלים, ביחזקאל ט, ו, היה גבריאל). ועל "מלאך" סתם, ראה למשל: סנהדרין פב ע"א. לדברי רבי יצחק, במגיפה בבעל פנחס, "ראה שבא מלאך והשחית בעם" (כן

שאף מהן אין משתמע על עלייה כלשהי בכוחו של מלאך המוות. אדרבה, כאשר לדרשות, אפשרי בהחלט, שאף הן מלמדות על העמדה הקדומה, אם במישרין ואם בעקיפין, ומשום כך אותן נציע תחילה.

1. בעבודה זרה לה ע"ב מובאת דרשה משם אמורא בבלי מן הדור הרביעי:

דרש רב נחמן בריה דרב חסדא,⁵² מאי דכתיב (שה"ש א, ג): לריח שמונך טובים, למה ת"ח דומה? לצלוחית של פלייטין, מגולה ריחה נודף, מכוסה אין ריחה נודף. ולא עוד, אלא דברים שמכוסין ממנו מתגלין לו, שנאמר (שם): עלמות אהבוך, קרי ביה עלומות. ולא עוד, אלא שמלאך המות אוהבו, שנאמר: עלמות אהבוך, קרי ביה על מות.⁵³ ולא עוד, אלא שנוחל שני עולמות, אחד העוה"ז ואחד העוה"ב, שנאמר: עלמות, קרי ביה עולמות.

לא נתברר בדרשה זו מה טיבה של הקביעה „שמלאך המות אוהבו“ אולם דווקא בשל עמימותה של דרשה זו, אין כל מניעה לפרש,⁵⁴ שגם האמורא שלפנינו סבור שמיתת ת"ח מופקעת מידיו של מלאך המוות, ואולי את הדבר הזה עצמו הוא ביטא במילים „שמלאך המות אוהבו“ אכן, גם פרשנות מתונה יותר למילים הללו,⁵⁵ עדיין לא תביאנו למסקנה שהדרשה שלפנינו מבטאת עמדה שונה מזו המשתקפת מכלל החומר התנאי והאמוראי שבבבלי.

2. בברכות סב ע"ב יש התייחסות למגפת הדבר אשר פשטה בעם בימי דוד המלך, ומובאת שם הדרשה הבאה:

ויאמר למלאך המושחית בעם רב (שמואל ב; כד, טז) – אמר רבי אלעזר, אמר ליה הקב"ה למלאך:⁵⁶ טול לי רב שבהם, שיש בו ליפרע מהם כמה חובות. באותה שעה מת אבישי בן צוריה ששקול כרובה של סנהדרין.

כפירוש השני, אפשר שמאמרו זה, ביסודו, שותף לעמדה שאפשר להינצל מפגיעתו של מלאך המוות. שכן, אם יש דמיון או חיבור כלשהוא בין השלושה, או אז, כדרך שניתן להתגבר על השטן (וזו דעת ריש לקיש עצמו, ראה למשל: ברכות ס ע"א, ביחס לאי-פתיחת פה לשטן), וכדרך שניתן להתגבר על היצר הרע (וגם זו דעת ריש לקיש, ראה: ברכות ה ע"א, על דרכי הלחימה ביצר הרע והכנעתו), כן ניתן, לדעתו, למנוע את שליטתו של מלאך המוות.

52 כן הוא בדפוסים וברוב כתבי היד. אבל, בכת"י מינכן: „רב נחמן בר יצחק“ הואיל ורב נחמן בר יצחק ורב נחמן בר רב חסדא הם בני אותו דור, הרי שחילופי הנוסח הללו אינם מהותיים לזמנה של הדרשה.

53 בפירוש רש"י שבענין יעקב: „על מות – הממונה על מות“

54 כך פירש ר"י ריישר, עיון יעקב, על עיון יעקב, ע"ז שם; „ומ"ש ולא עוד אלא שמלאך המות אוהבו, כך מצינו באברהם שלא שלט ביה מלאך המות, כדאיתא סוף פ"ק דב"ב וכמ"ש“

55 למשל, אפשר לפרש שאהבת המלאך משמעותה שמלאך המוות יתרועע עם החכם וימסור לו מידע (וכפי שפירש מהרש"א, חידושי אגדות, ע"ז שם, וראה גם המסופר על ריב"ל ור' חנינא בר פפא, בכתובות עז ע"ב, והמסופר על רב ביבי בר אבבי, בחגיגה ד ע"ב). אכן, גם לפרשנות זו, עדיין אין בדברי האמורא שלפנינו עמדה חדשה ביחס לשאלה מי ממית את החכם.

56 1. הנוסח „אמר רבי אלעזר“ מופיע בדפוס ונציה ודפוס שונצינו, ובכת"י מינכן: א"ר אליעזר, והוא שיבוש של אלעזר. אבל, בכת"י אוקספורד 366 ובכת"י פרמה 3010: „אמ' ר' יהודה אמ' רב“ וכן בכת"י לונדון בר"מ 406: „א"ר יהודה א"ר“ ובעין יעקב מובאת הדרשה ללא שם. 2. הנוסח „אמר ליה הקב"ה למלאך“ מופיע בדפוסים ובכל כתבי היד שלפנינו, למעט כת"י פריז 671, שאף לא מציין „מלאך“, אלא: „א"ל הקב"ה טול לי רב שבהם“

קיימין ביה כודנייתא חוורתא, אמר: מלאך המוות בביתו של זה ואני אסעוד אצלו?" את התואר "מלאך המוות" הפנה רבי פנחס לפרדות הלכות שראה בביתו של רבי, וכוונתו הייתה שהן דבר שמביא מיתה לבריות.⁶⁶

חזוק לדברינו ביחס לביטוי "פרווקא דמלאכא דמותא" עולה מדברי בעל הערוך שכתב: ⁶⁷ "בפ' אין מעמידין בגמ' מתרפאין האי עינכתא פרווקא דמיתותא" בין אם בגירסתו בבבלי מדובר ובין אם בהבנתו, מתברר ש"מלאכא דמותא" ענינו "מיתותא" והביטוי שלפנינו הוראתו היא דבר הגורם מוות.⁶⁸

אשר אמרנו עתה ביחס לביטוי המופיע במימרת רב ספרא, יש לומר גם ביחס להופעה דומה שלו במימרת רבא, בנדרים מא סע"א-רע"ב: "אמר רבא: האי אישתא, אי לאו דפרווקא דמלאכא דמותא, מעלי כחזירא לדיקלי חד לתלתין יומין, וכי תירייקי לגופא" כללו של דבר, מימרות רב ספרא ורבא אין בהן כל אמירה ביחס למלאך המוות עצמו, ונמצא שבכל המימרות והדרשות האמוראיות שבבבלי, לא ניתן להצביע על עמדה שונה מזו שהכרנו עד כה.

ד. בסיפורי הבבלי הסתיים מלאך המוות הוא שממית את החכמים

למפנה ברור ומפורש בהיקף כוחו ושלטונו של מלאך המוות, אנו עדים בתלמוד הבבלי רק בסיפורים הנמסרים ללא שם (להלן: סתיים).

תשעה סיפורי פטירה סתיים, שבהם היה מעורב מלאך המוות, יש בבבלי, והם מרוכזים בשני מקבצים: בחומת קטן כח ע"א, יש מקבץ המכיל שבעה סיפורי פטירה של שבעה אמוראים, לפי הסדר הזה: ⁶⁹ רבא, רב נחמן, רבי אלעזר, רב ששת, ר' אסי, ר' חסדא ור' חייא. ובכתובות עז ע"ב, יש מקבץ המכיל שני סיפורי פטירה של שני אמוראים, שהם: רבי יהושע בן לוי ורבי חנינא בר פפא.⁷⁰

מחקור ישראל, 282. ועל היותו מציין דבר הגורם מיתה (בדומה לדוגמה שתובא בפנים), ראה: נדרים מט ע"א, שם נאמר הביטוי "מלאך מותא" ביחס לדלעת שהיתה מונחת בבית ר' ירמיה. ולדוגמה אחרת ראה להלן הערה 68.

66 וכמבואר בהמשך הסוגיה שם: "דאמר רבי חנינא: מימי לא שאלני אדם על מכת פרדה לבנה, וחיה".
67 ראה: ערוך השלם (מהד' קאהוט [ט' חלקים; ניו-יורק: הוצאת פרדס, תשט"ו] 1, ערך ענב, ג, 222). אמנם, שם, ערך פרווקא, 416, כתב: "בפ' אין מעמידין בגמ' מתרפאין האי עינכתא פרווקא דמלאכא דמיתותא היא... כך כשיבא זה החולי על אדם הוא פרווקא דמלאך המוות והוא שלוחו ופי' פרווקא שליח".
68 והראול ולעיתים המונח "מלאך המוות" הוראתו "מוות" הרי שכשם שיתכן חילוף בין "מלאך המוות" לבין "מות" דוגמת הנוסח שמובא בערוך לעומת שאר עדי הנוסח, כן יתכן לאידך גיסא, שתיבת "מות" תוחלף ב"מלאך המוות" כך אירע בברכות מ ע"א, שם שנינו בכריתא: "רשב"ג אומר קצח אחד מששים סמני המות הוא" והנה, לעומת נוסח זה שרווח בדפוסים וברוב כתבי היד, הרי שבכת"י פריז 671, הנוסח הוא: "קצח אחד מששים סמני מלאך המוות" וכשם שבנידון זה, "סמני מלאך המוות" משמעם, "סמני המוות" כך גם בנידון שלנו, "פרווקא דמלאכא דמותא" ענינו, "פרווקא דמיתותא".
69 על מקבץ זה וטיבו עמד בקצרה עלי יסיף, "מחזור הסיפורים באגדת חז"ל" מחקרי ירושלים בספרות עברית יב (תש"ן) 130 (= יסיף, סיפור העט, 255). ובאופן נרחב ויסודי, ראה: דיימנד, "היאבקות" אשר עמד על שיקולי המבנה והסדר שבו, ובירר את מסריו המגוונים בסוגיית המוות וההתמודדות עימה. הסיפורים שבמקבץ זה אינם לפי סדר כרונולוגי, וזו תופעה רווחת במקבצי הסיפורים בספרות חז"ל, ואף במקבצים ביגראפיים של גיבור אחד, לרוב, אין על כך הקפדה (ראה: יסיף, סיפור העט, 114-119, וגם דיימנד, "היאבקות").

70 נציין כמה פרטים לגבי ארבעה מן הסיפורים הללו: 1. סיפור פטירת רב אסי - השם, "רב אסי" מופיע בחלק ניכר מעדי הנוסח (שלא כגורסים: "רב אשי"), ובנוסח הזה ("אסי") צידדו החוקרים. אלא שהם

בשעה שכזאת, כך מסתבר, גם מיתת הצדיק, ובנידון כאן מיתת אבישי בן צרויה, מסורה ל„מלאך המשיחית בעם“⁶¹

כללו של דבר, הן הדרשה האמוראית „שמלאך המות אוהבו“ והן הדרשה האמוראית על מיתת אבישי בן צרויה אין בהן כל ביטוי להתחזקות במעמדו של מלאך המוות. אדרבה, אפשר שהדרשה הראשונה מביעה מפורשות את אי-שליטתו של מלאך זה על פטירת גדולי האומה וחכמיה, ואפשר שהדרשה השנייה מביעה זאת במובלע – בכך שהיא מייחסת את מיתת אבישי למלאך סתמי, ולא למלאך המוות! עתה נדון בשתי המימרות. מימרות אלו עוסקות בענייני מחלות והן דומות בניסוחן, ונציע תחילה את זו שנראית הקדומה מביניהן.

3. כעבודה זרה כח ע"א נאמר:

אמר רב ספרא: האי עינבתא – פרוונקא דמלאכא דמותא⁶² היא. מאי אסותא? טיגנא בדובשא או כרפסא בטיליא. אדהכי והכי, ליתי עינבתא בת מינא וניגנדר עילוי, חירותי לחירותי ואוכמתי לאוכמתי.

דברי רב ספרא אלו, כפי הנראה, מופנים לא רק להמון העם אלא גם לתלמידי חכמים, ואם כן, משתמע מהן לכאורה, שגם הם חשופים לפגיעתו של „מלאכא דמותא“⁶³ אכן, לאמתו של דבר, אין במימרה שלפנינו כל התייחסות למלאך המוות ולשלוחיו, לפי שהביטוי „פרוונקא דמלאכא דמותא“ הוא מליצה, שמשמעותו דבר הגורם מיתה, וזאת בדומה לביטוי התלמודי „סמא דמותא“⁶⁴

ובאמת, כבר מצאנו בבבלי את השימוש במונח „מלאך המוות“ כמונח שאיננו מציין את המלאך עצמו, אלא כמונח המציין מוות, או המציין דבר הגורם מיתה.⁶⁵ כך למשל, בחולין ז ע"ב מסופר על רבי פנחס בן יאיר: „כי אתא, איתרמי על בההוא פיתחא דהו

הנוסח בדפוס ונציה ושונציו, ובכתבי היד: פלורנץ-מגליבכי, קרלסרוה, תימני, לונדון בר"מ 406, פרמה 3010, מונטיפיורי 88, ובעין יעקב. רק כת"י מינכן 95 גורס כאן: „ראה מלא' המות שהי' משחי' בעם“; שם פב ע"ב, לדברי רבי יוחנן, „בא מלאך והשחית בעם“ (כן הוא בכל עדי הנוסח, לרבות כת"י מינכן). וכזה הוא גם המקור הנידון מבבלי ברכות, המציין „מלאך“ בלבד (בכל עדי הנוסח, לעיל הערה 56). אבל לא למלאך המוות. על הבנה זו, שלא מלאך המוות הוא שנטל חלק באירוע הזה, מלמדים גם פירושי הראשונים. כך למשל, כתב הרלב"ג בפירושו לשמואל ב; כד, טז: „ידמה לפי מה שאחשב, שזה המלאך היה נביא... והוא היה משחית בעם במצות השם יתברך... ואחשוב שזה המלאך היה פנחס“ מענינים גם דברי הרמב"ן, אשר בפירושו לתורה התייחס לפסוק (שמות יב, כג) ולא יתן המשחית לבוא אל בתיכם לנגוף, וכתב (שם): „וטעם ולא יתן המשחית – המלאך המשחית בעולם בעת הנגף, כענין ויאמר למלאך המשחית בעם רב עתה הרף ידך“ מדבריו משתמע שיש מלאך מיוחד המשחית בעולם בעת הנגף, והוא גם היה מלאך שהשחית בימי דוד.

62 כן הוא בדפוסים וברוב כתבי היד. אמנם, בהגדות התלמוד דפוס קושטא: „פרוונקא דמלאכא דמיתותא“ וראה להלן הערה 67.

63 ואמנם, אין זו חשיפה נחרצת ומוחלטת, שהרי רב ספרא עצמו, או סתם הבבלי, מציע „אסותא“ לחולי „עינבתא“ ונמצא, שחולי זה, בעצם, בשליטת בשר ודם וניתן להינצל ממנו. עוד על עצות של חכמי התלמוד בענייני בריאות, ראה: משה בר, אמוראי בבלי: פרקים בחיי הכלכלה (רמת-גן: הוצאת אוניברסיטת בר-אילן, תשמ"ב) 277-284.

64 על הביטוי „סמא דמותא“ ראה לדוגמה: פסחים פח ע"א (ביחס לתמרים); שבת פח ע"ב; יומא עב ע"ב (ביחס לדברי תורה). על „פרוונקא דמלאכא דמותא“ במשמעות של דבר הגורם למיתה, עולה גם מרש"י, ע"ז שם, שפירש: „פרוונקא דמלאכא דמיתותא הוא – כלומר מסוכן הוא להמית“ ונמצא, שמליצה זו דומה במשמעותה ל„סכנתא“ הנזכרת שם בסוגיה, ועוד הרבה בבבלי, בהקשר למחלות ופגעים שונים.

65 על „מלאך המוות“ כמונח המציין מוות, ראה: ב"ב ע ע"ב, „מלאך המות הוא דאנסיה“ ועמד על כך שוררצבאום,

מרבנן" הרי ששני מדרשי אגדה, קהלת רבה (ג, ב) ודברים רבה (ט, א),⁷² המתייחסים גם הם לדברים שאמר מלאך המוות בעניין תוספת חיים לתלמידי חכמים, קובעים מפורשות, שאין היא ניתנת על ידו אלא ידי ישות אחרת. כך נאמר בקהלת רבה: „והקב"ה מוסיף ימים על ימיכם" וכעין זה בדברים רבה: „פעמים שהקב"ה חפץ במעשים הטובים ומוסיף בכם חיים”

מה פשר ההבדל הזה שבין הסיפור שבבבלי לבין מדרשי האגדה? לדעתנו, השוני הזה מובן ומתבקש. שכן, בעוד שמדרשי האגדה משמרים את העמדה התנאית, שהצדיקים והחכמים הם מחוץ לתחום שלטונו של מלאך המוות (לעיל סע' ב), הרי שהסיפור הסתמי שבבבלי משקף גישה אחרת, והיא – שגם הם שייכים לתחום פעילותו וגם עליהם הוא שולט. משום כך, מי שנותן לתלמידי החכמים תוספת חיים, לפי סיפור זה שבבבלי, אינו הקב"ה אלא מלאך המוות.

עתה עלינו לשאול מהו היחס בין כלל הסיפורים הללו לבין שאר החומר שבבבלי? האם סיפורים אלו משקפים את זמנם של הדמויות המשולבות בהם, ויש לראות בהם ביטוי לגישה אמוראית מיוחדת, או שמא מוצאם בתר-אמוראי, ובאמצעות סיפורים על דמויות (האמוראים) שקדמו להם, מביעים החכמים התר-אמוראיים את עמדתם השונה מזו שהכרנו עד כה? על עניין זה נעמוד בסעיף הבא.

ה. זמנם של הסיפורים הסתמיים על מלאך המוות

על מנת לברר את זמנה של התפיסה העולה מסיפורי הפטירה שבבבלי, שנסקרו בסעיף הקודם, עלינו להקדים את הדברים הבאים.

1. לפי המקובל במחקר הבבלי בעשורים האחרונים, קיימת הבחנה בין חומר אמוראי (מימרות) לבין חומר סתמי (סתמות). הסתמות בבבלי הם הדיבורים המופיעים בעילום שם ואומר, שרובם שקלא וטריא, משא ומתן. על הבחנה זו העמידו שניים מחוקרי זמננו: דוד וייס הלבני ושמא יהודה פרידמן, וזאת על סמך מחקרים עצמאיים ובלתי תלויים שהם ערכו בסוגיות הבבלי. מסקנתם הזוהי היתה, שהחומר הסתמי הוא בתר-אמוראי, והוא שונה בטיבו ובמאפייניו.⁷³

72 על היחס בין החומרים שבמדרשים הללו, ראה: הירשמן, „לדרך השימוש”;
73 1. על מחקרי הלבני – שיטת הלבני הופיעה לראשונה בהקדמתו לספרו מקורות ומסורות, כרך ב, מיומא עד חגיגה, 12–1, אלא שזו הלכה ונתגבשה עם השנים מכרך לכרך, בסדרת ספריו אלו – ראה לעיל הערה 41. הלבני סיכם את שיטתו בספרו (באנגלית): *David Halivni, Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law* (Cambridge, Mass.: Harvard Univ. Press, 1986) 76–104. שנים האחרונות סיכם הלבני שוב את שיטתו, ליטשה ותיקנה, במאמרו: „עיונים בהתהוות התלמוד” סידרא כ (תשס"ה) 69–117 (להלן: הלבני, „עיונים”); ובגרסה מקוצרת, באנגלית, במאמרו: David Halivni, „Aspects of the Formation of the Talmud,” in Jeffrey L. Rubenstein, ed., *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggada* (Tubingen: Mohr 339–60 Siebeck, 2005) (להלן: הלבני, „אספקטים”). ולאחרונה, בהרחבה רבה, במבוא לספרו: מקורות ומסורות: ביאורים בתלמוד מסכת בבא בתרא (ירושלים: הוצאת מאגנס, תשס"ח) 148–1 (להלן: הלבני, מסכת בבא בתרא). 2. על מחקרי פרידמן – ראה לעיל הערה 41. לסקירת שיטתם של הלבני ופרידמן, ול„הרהורים” עליה ועל זמנו של החומר הסתמי, ראה לאחרונה: ירחמיאל ברודי, „סתם התלמוד ודברי האמוראים” בתוך כרוך יעקב שורץ, אברהם מלמד, אהרן שמש, עורכים, איגוד: מבחר מאמרים במדעי

אל תשעת הסיפורים הללו, יש לצרף עוד שני סיפורים, שקרוב לוודאי, גם הם של סתם התלמוד. האחד הוא סיפור הפטירה של רבה בר נחמני, בבבא מציעא פו ע"א, והשני, החריג מכולם באישיות המומתת בו, הוא סיפור הפטירה של דוד, בשבת ל ע"ב.⁷¹ ככל הסיפורים הללו היה מעורב מלאך המוות, וברור מן הסיפורים הללו, שהוא היה הגורם הממית. זאת למעט סיפור אחד, סיפור פטירתו של רבי יהושע בן לוי, שבו הוא הצליח להערים על המלאך ולהינצל מפגיעתו. עם זאת, גם מן הסיפור הזה משתמע בכירור, שאלמלא הערמה זו, מלאך המוות הוא שהיה ממית אותו.

ניתן אפוא לקבוע בוודאות ולומר, כי שלל סיפורי הפטירה הסתמיים שבבבלי, מהווים עדות ברורה לשינוי במעמדו של מלאך המוות – לא עוד מלאך שגדולי הדורות והצדיקים מופקעים מתחתו, אלא מעתה הוא השולט גם עליהם, והראיה – שאת מיתת גדולי האמוראים בדורותיהם הראשונים, ואף את מיתת דוד מלך ישראל, מייחסים הסיפורים הללו לפעולתו של מלאך המוות!

לצד סיפורי הפטירה, הנוקטים „עמדה מפורשת” ביחס לעליונותו של מלאך המוות על חכמי ישראל, יש בבבלי סיפור סתמי נוסף אשר מתפרש יפה דווקא לפי עמדה זו, וככה, הוא מלמד עליה במובלע.

כוונתנו לחגיגה ד סע"ב-ה רע"א, שם מספר סתם התלמוד על שיח שניהל רב ביבי בר אבבי עם מלאך המוות, ובין השאר שאלו רב ביבי, מה הוא עושה עם השנים הנותרות, שהיו קצובות לאדם שמת קודם זמנו („שניה מאי עבדת”), ותשובת המלאך היתה: „אי איכא צורבא מרבנן, דמעביר במיליה, מוסיפנא להו ליה, והוא חלופיה.” והנה, לעומת הסיפור שבבבלי הקובע שמלאך המוות הוא שמוסיף שנים ל„צורבא

נחלקו בשאלת זהותו – אם הוא רב אסי, תלמיד רבי יוחנן, שנפטר בטבריה, או שהוא רב אסי בר נחן, אמורא בבלי בדור השלישי. על כל העניין, ראה: דוד הנשק, „למי המתין מלאך המוות? (משהו לכרונולוגיה התלמודית)”, סיני קי (תשנ"ב) רסו-רעא, והוא שחידש את האפשרות השנייה. לדיון נוסף בדבריו ולחיוזוקם, ראה: אבינועם כהן, רבינו וחכמי דורו (רמת-גן: הרצאת אוניברסיטת בר-אילן, תשס"א) 255. 2. סיפור פטירת רב חסדא – לסיפור זה יש מקבילה במכות י ע"א, ויתכן שזו העברה ממועד קטן למכות, ראה דיונונו להלן סעיף ה, היחס לחומר סתמי נוסף בבבלי, 1 (עמ' כז-כח). 3. סיפורי ריב"ל ור' חנינא בר פפא – עליהם ועל היחס ביניהם, ראה: יונה פרנקל, „דמותו של ר' יהושע בן לוי בסיפורי התלמוד הבבלי” דברי הקונגרס העולמי השישי למדעי היהדות (תשל"ג) 403:407, ועל הסיפור על ריב"ל וגרסאותיו השונות, ראה קושלבסקי, „הומור” וקושלבסקי, אנציקלופדיה.

71 נציין כאן כמה פרטים לגבי שני הסיפורים הללו: 1. סיפור הפטירה של רבה בר נחמני – סיפור נרחב זה פותח בכותרת: „אמר רב כהנא: אישתעי לי רב חמא בר ברתיה דחסא: רבה בר נחמני אגב שמדא נח נפשיה” אבל בהחלט יתכן, שהמשך הדברים שייך לסתם התלמוד. וראה גם: שמא יהודה פרידמן, „כתיב השמות, רבה, ורבא' בתלמוד הבבלי” סיני קי (תשנ"ב) קנו, שהעיר שיש בסיפור זה מוטיבים גאונים! 2. סיפור פטירת דוד – לפני הסיפור הזה מובאת בתלמוד דרשה ארוכה בשם „רב יהודה אמר רב” אבל אין כל הכרח לייחס לו גם את הסיפור. והאמת היא, שאי-אפשר לייחס לו את הסיפור, לפי שכתבי היד מלמדים שהקטע על מלאך המוות בסיפור דוד אינו אלא הוספה מאוחרת של סתם הבבלי, שאיננה מעיקר הסיפור, וכבר העיר על כך בקצרה ירחמיאל ברודי, צוהר לספרות הגאונים (תל-אביב: הקיבוץ המאוחד, תשנ"ח) 82, הערה 3, ולהלן סעיף ה, היחס לחומר סתמי נוסף בבבלי, 2 (עמ' כח-ל), נדון בסיפור זה ובנוסחיו.

להשלמת התמונה עלינו לציין, כי בחומר הסתמי יש עוד שני סיפורי פטירה שבהם מעורב מלאך המוות, אבל הם מתייחסים לפעילותו, „הגשרותיה” המתת אנשים ונשים בעולם ובישראל, ואינם נוגעים אפוא לדיון כאן. ראה: סוכה נג ע"א (המסופר על פטירת שני הסופרים של שלמה המלך); חגיגה ד ע"ב-ה ע"א (המסופר על פטירת מרים מגדלא דרדקי).

הבולטים שבהם בשנים האחרונות הוא יעקב (ג'פרי) רובינשטיין.⁷⁹ בניתוח מקיף ויסודי של סיפורים רבים בבבלי, תוך השוואה למקבילותיהם בירושלמי ובספרות האגדה הארץ-ישראלית, קבע רובינשטיין, שסיפורים לא מעטים בבבלי הם אכן מאוחרים, חלקם סיפורים קדומים שעובדו ופותחו על ידי הסתמאים, וחלקם סתמאיים ביסודם. במחקריו אלו, פתח רובינשטיין צוהר של ממש לעולמם של הסתמאים – מאווייהם, עמדותיהם ויחסם למגוון של נושאים.⁸⁰

על יסוד המחקרים הללו ובדרכם, ניגשנו לבחון את הממצא הספרותי שהעלנו אנו ביחס למלאך המוות. הערכתנו היא, שמוצאם של הסיפורים הסתמיים שבבבלי – על מלאך המוות שממית את החכמים – הוא תר-אמוראי. את ההערכה הזו אנו מבססים על הנתונים הבאים, אשר חוברים יחד כראיות מצטברות:

השוואה למקבילות ארץ-ישראליות. ראשית, יש לשים לב לעובדה, שלמקצת מסיפורי הפטירה שבבבלי, שבהם מלאך המוות הוא הגורם הממית, יש מקבילות מסוימות בירושלמי ובמדרשי האגדה, אבל בכל המקבילות הללו אין כל אזכור למלאך המוות.

כך למשל, בעוד שבסיפור הפטירה של רבי יהושע בן לוי, מציע הבבלי (כתובות עז ע"ב) סיפור ארוך ומפותח, המלמד בין השאר כי מיתתו של אמורא זה נמסרה לידי מלאך המוות, הרי שבירושלמי (ע"ז, פ"ג ה"א), ובבראשית רבה (סב, ב) מופיע סיפור קצרצר על שעת פטירתו, ואין בו כל אזכור לנוכחותו של מלאך.

ובעיקר,⁸¹ לעומת הבבלי (שבת ל ע"ב) שמציע סיפור משוכלל על מלאך המוות שממית את דוד, הרי ששני מדרשי אגדה, קהלת רבה ורות רבה, משמרים מסורת אחרת, ואין בהם כל אזכור של מלאך זה. בקהלת רבה (ז, ד) נאמר: „דוד שמת על מטתו כתיב בו שכיבה“⁸² וברות רבה (ג, ב), כל שמסופר על פטירתו הוא: „ומת בעצרת שחל להיות בשבת“ ואמנם, שוני אחרון זה ב„תיעוד“ פטירת דוד קיים גם בין הבבלי לירושלמי,⁸³

79 וזאת הן במאמריו והן בספריו, ראה במיוחד את ספרו: רובינשטיין, „סיפורים תלמודיים“ ואת וספרו: Jeffrey L. Rubenstein, *The Culture of The Babylonian Talmud* (Baltimore: John Hopkins Univ. Press, 2003) (להלן: רובינשטיין, התרבות).

80 יש להדגיש, שגם את הידוע על הסתמאים, מן הניתוחים של הלבני לסוגיות הבבלי, בדק רובינשטיין וביסס בסיפורי הבבלי. כך למשל, ביחס לדרכי הלימוד של הסתמאים, קבע הלבני, שהמשא ומתן (שקלא וטריא) היה אצלם לערך עליון והוא המאפיין העיקרי של תורם. אכן, בעוד שהלבני ביסס קביעה זו על ניתוחיו המרובים לסוגיות הסתמיות שבבבלי, הרי שרובינשטיין פנה אל הסיפורים שבבבלי והוכיח, שהן בסיפורים הסתמיים והן בעיבודים המאוחרים לסיפורים הקדומים, אכן מתבלט ומוחצן ערך זה. ראה: 71–84 (2003) 34 *JJS*, „The Thematization of Dialectics in Bavli Aggadah“, Jeffrey L. Rubenstein; רובינשטיין, התרבות, 39–53. ולאחרונה: יעקב (ג'פרי) רובינשטיין, „הדיאלקטיקה כנושא מרכזי באגדה הבבליה“, דיני ישראל כד (תשס"ז) 215–233.

81 אפשר שיש לכך ביטוי גם בסיפור פטירת רב אסי, שלעומת הבבלי (מו"ק כח ע"א) המערב בפטירתו את מלאך המוות, הרי שבתנחומא משפטים, ב, מופיע סיפור פטירה אחר, שבו נפקד מקום המלאך. אולם, השוואה זו הולמת רק את שיטת החוקרים שרב אסי הנוצר בבבלי מו"ק הוא רב אסי תלמיד רבי יוחנן, ראה לעיל הערה 70.

82 וראה לעיל הערה 29.

83 ראה: ירושלמי ביצה ב, ד, סא ע"ג; שם חגיגה ב, ג, עח ע"א, ושם נאמר: „דוד מת בעצרת“ וראה: מירון ביאליק לרנר, „אגדת רות ומדרש רות רבה“ (ג' חלקים: עבודת דוקטור: ירושלים: האוניברסיטה העברית, תשל"א) א:קמז, הערה 139, שציין כי המסורת על פטירת דוד בשבת, ביסודה, היא כנראה תנאית (תוספתא שבת, פ"ז ה"ט; בבלי שבת קנא ע"ב), ועורך רות רבה הרכיב מסורת זו עם מסורת הירושלמי

הלבני כינה את בעלי החומר הסתמי „סתמאים”⁷⁴ ולאחרונה קבע שתקופתם התחילה לאחר תקופת האמוראים כולה, והיא נמשכה קרוב למאתיים שנה, מאמצע המאה השישית עד אמצע המאה השמינית (550–750 לספ״).⁷⁵ אף הוסיף: „על פי ההנחה שאחרי האמוראים באו הסתמאים, אין צורך לומר שהיו שתי תקופות נפרדות, אחת של הסתמאים ואחת של הסבוראים, אלא תקופה אחת, זו של הסתמאים (הרי גם הסבוראים סתמאים הם), והסבוראים הם הסתמאים בסוף תקופתם”⁷⁶

2. הבחנה זו של החוקרים, בין חומר אמוראי לבין חומר סתמי, נעשתה ביחס לסוגיות הבבלי. אבל היא הציבה תשתית, וכמובן אתגר, לעיון מחדש גם בסיפורי הבבלי. שהרי סיפורי הבבלי, לרוב, נמסרים ללא שם המספר, ומעתה, יש „לחשוד” בהם, שמא ממוצא בתר-אמוראי הם, מן הסתמאים. זאת ועוד, גם סיפורים, שברור לנו שיש להתייחס אליהם כקדומים, כסיפורים ממוצא תנאי או אמוראי, עדיין אפשרי הדבר שחלו בהם ידי הסתמאים, והם עיבדו ופיתחו, ונמצא, שבצורתם זו, האחרונה, כפי שנשתמרו לפנינו בבבלי, הם משקפים בעצם את יצירת הסתמאים.

לזיהוי מוצאו של הסיפור, יש לזכור, יש השלכות משמעותיות ביותר. שכן, הנחת יסוד במחקר המודרני היא,⁷⁷ שסיפורים, ובכלל זה סיפורי הבבלי, משקפים את עולמם הרוחני של המספרים, ולא את העולם האמיתי של הדמויות שבסיפורים, את תקופתם של המספרים ולא את זו של הסיפורים. לפיכך, כל אותם סיפורים שבבבלי המוסבים על ימי התנאים והאמוראים וקורותיהם, ולבטח על תקופות קדומות להם, אם אמנם מקורם סתמאי, או חלו בהם ידי הסתמאים, כי אז, על רקע עולמם של הסתמאים ותקופתם עלינו להבינם, לנתחם ולבחון את מגמותיהם.⁷⁸

ואכן, מספר חוקרים כבר טיפלו וחקרו מחדש סיפורים בבבלי לאור ההבחנות הללו, ומן

היהדות (ירושלים: האיגוד העולמי למדעי היהדות, תשס״ח) א: 213–232. יש לציין, כי גם לדעת הלבני, שהחומר הסתמי בסוגיות הבבלי הוא בתר-אמוראי, כן הוא בדרך כלל, אבל קיימת אפשרות שנשתמרו גם סתמות קדומות – מתקופת האמוראים. ראה למשל: הלבני, מסכת בבא בתרא, 37–38.

74 זאת בניגוד לפרידמן שלא הגדיר את החכמים הללו בשם, אלא רק את החומר שלהם הגדיר כסתמי, והוא גם לא קבע גבולות זמן לתקופת היצירה של החכמים הללו. מכאן ולהלן, גם אנו משתמשים כמנוח (של הלבני) „סתמאים” וזאת כדי לציין את החכמים הבתר-אמוראים. אבל אין בכך כוונה להכריע ביחס שבינם לבין הסבוראים ובאורך תקופתם.

75 בעניין זה, (משך) זמנם של הסתמאים, נתחבט הלבני וחזר בו כמה פעמים, והאמור בפנים משקף את קביעתו האחרונה, שנתפרסמה תחילה בחורף תשס״ז, במאמרו: הלבני, „עיונים” 70–77; ובגירסה האנגלית: הלבני, „אספקטים” 340–346, ונתפרסמה לאחרונה, בשנת תשס״ח: הלבני, מסכת בבא בתרא, 6–14.

76 ראה: הלבני, „עיונים” 73; הלבני, „אספקטים” 344. וכעין זה, הלבני, מסכת בבא בתרא, 9–10. עם זאת, סבור הלבני, יש הבדל מהותי בין פעילותם של הסתמאים לבין זו של הסבוראים בהתהוות התלמוד הבבלי, ראה: „עיונים” 77; „אספקטים” 344–346; מסכת בבא בתרא, 10–11.

77 ראה למשל: יונה פרנקל, „שאלות הרמניטיות בחקר סיפור האגדה” תרביץ מז (תשל״ח) 139–172; פרנקל, דרכי האגדה והמדרש, 235–242. לחומר נוסף, ראה סיכומי של רובינשטיין, „סיפורים תלמודיים” 3–10. ולסיכום הגישות המודרניות בחקר הסיפור התלמודי, ראה לאחרונה: משה לביא, „הפסיפסור התלמודי: בין הוראת התורה לגדולה וגאולה – סיפורי רבי ורבי חייא כדוגמה לשחזור פרק בדימוי העבר התנאי בתלמוד הבבלי” JSIJ 8 (2009) 52–56, ובהערות שם.

78 אכן, מסיפורים קדומים, שעברו עיבודים ופיתוחים, אפשר גם להוציא מסקנות ביחס למספרים הקדומים, אלא שתחילה יש לחשוף את „הגרעין הספרותי” בסיפורים הללו לפני שדנים בגרעין ההיסטורי שבהם. ראה: שמא יהודה פרידמן, „לאגדה ההיסטורית בתלמוד הבבלי” ספר הזכרון לרבי שאול ליברמן (ניו-יורק וירושלים: בית המדרש לרבנים באמריקה, תשנ״ג) במיוחד 119–122.

1. במכות י ע"א, יש סוגיה העוסקת בדין גלותו של רב לעיר מקלט:

א"ר יוחנן: הרב שגלה – מגלין ישיבתו עמו. איני? והא א"ר יוחנן: מנין לדברי תורה שהן קולטין? שנאמר (דב' ד, מג): את בצד במדבר וגו' (וכתיב בתריה) ⁸⁵ וזאת התורה (שם; מד)! לא קשיא: הא בעידנא דעסיק בה, הא בעידנא דלא עסיק בה. ואי בעית אימא: מאי קולטין? ממלאך המות. כי הא דרב חסדא הוה יתיב וגריס בבי רב, ולא הוה קא יכול שליחא [דמלאכא דמותא] ⁸⁶ למיקרב לגביה, דלא הוה שתיק פומיה מגירסא; סליק ויתיב אארזא דבי רב, פקע ארזא ושתיק, ויכיל ליה.

לפי התשובה השניה בסוגיה „מאי קולטין – ממלאך המות“ עולה, שמירת רבי יוחנן השניה איננה מתייחסת כלל לדין עיר מקלט, אלא להגנת התורה על לומדיה מפני מלאך המוות, וכחזיון להבנה זו, מביאה הסוגיה את סיפור פטירתו של רב חסדא ברם, המעיין בסיפור זה, מהרה ישים לב, כי מיקומו בסוגייתנו מוקשה ותמוה. שהרי למרות שרב חסדא עסק בתורה, וללא הפסקה, הצליח השליח, או מלאך המוות, ⁸⁷ למצוא דרך להפסיק אותו מלימודו ולהמיתו, ואם כן, לבטח הם יוכלו, באופנים שונים, להפסיק כל תלמיד חכם העוסק בתורה ולהמיתו, ואיוזו ראה יש ממעשה זה לכך שדברי תורה „קולטין ממלאך המות“? – אדרבה, מעשה רב חסדא מוכיח שאין התורה יכולה לשמש אמצעי הגנה מפני מלאך המוות, אלא לזמן מועט ביותר! ⁸⁸

אכן, קושי זה נובע מתוך התייחסות לסוגיה שלפנינו כאל מקשה אחת, אבל לדעתנו, סוגיה סתמית זו מכילה שתי שכבות, ⁸⁹ כאשר השכבה הסתמית האחת משקפת את העמדה הקדומה, שמלאך המוות מופקע מעולמם של החכמים, והשכבה הסתמית השניה משקפת את השינוי שחל במעמדו. מעתה תתבאר הסוגיה שלפנינו באופן הבא:

השכבה הקדומה בסוגייתנו כללה את הקושיה ואת שני התירושים בלבד. לאמור: התירוצי השני הסתיים במילים „מאי קולטין – ממלאך המוות“ וכוונתו היתה לקליטה מוחלטת. היינו שתלמידי חכמים העוסקים בתורה אינם נמסרים בידי מלאך המוות, אלא הם מתים ע"י האלוהים בעצמו! ⁹⁰

אמנם, בשלב מאוחר יותר, משנתחזק מעמדו של מלאך המוות ונקבע שהוא ששולט

85 של מלאך המוות, מפנה שהלך והעצים בסיפורים הסתמיים ובחומר הסתמי שיובא להלן בסעיף זה. התוספת בסוגריים היא בדפוס וילנה.

86 התוספת בסוגריים היא בדפוס וילנה. אבל, בדפוס ונציה, בכת"י מונטיפיורי 88, ובכת"י וינה B 35, הנוסח הוא: „שליחא“ בכת"י מינכן הנוסח הוא: „ולא הוה יכיל ליה מלאך המו' לקרב' גבי'“ וכעין זה בכת"י תימני: „ולא קא יכול מלאך המות למיקרב ליה“ ובעין יעקב נחמזגו שני הנוסחים: „ולא מצי שליחא דמלאכא דמותא למיקרב ליה“.

87 ראה ההערה הקודמת.

88 כבר בספרות הרבנית חשו בקושי זה, ראה למשל: ר' צבי הירש צלאל יכין קאהאן, אחרי צבי (ד"ר, וילנא, תרנ"ח. ירושלים: דפוס העברי רחוב נחלת שבעה, תרפ"ד) מכות שם, דף נח ע"א: ר' משה ליב שחור, אבני שחם (ירושלים: דפוס „עקיבא יוסף“ תשכ"ח) ואתחנן, עמ' שכז.

89 כבר לימדונו החוקרים כי יש שכבות גם לחומר הסתמי, ראה לאחרונה: הלכני, „עיונים“ 102-107: הלבני, „אספקטים“ 347; הלבני, מסכת בבא בתרא, 29-36.

90 להבנה זו, עולה יפה גם האסמכתא שהביא רבי יוחנן מן המקרא, ורב הדמיון שבין התורה לעיר המקלט. שכן, כשם שעיר המקלט מגינה על הגולה מפני אישיות מסוימת בלבד – גואל הדם, כך גם התורה מגינה על הלומד מפני, אישיות מסוימת בלבד – מלאך המוות. לעומת זאת, להבנה הרווחת בתירוץ זה („קולטין ממלאך המוות“). שהתורה מגינה על הלומד ממוות בכלל, הדמיון שבין לימוד התורה לעיר המקלט מועט יותר, שהרי אין עיר המקלט מספקת הגנה שכזו.

אלא שברות רבה הוא בולט וחרף במיוחד. זאת לאור העובדה, שלסיפור הפטירה של דוד יש מסגרת נרחבת בבבלי: לפני הסיפור מופיעה דרשה העוסקת במועד שקבע ה' ליום פטירת דוד, ואחרי הסיפור מתואר מה עשה שלמה בעקבות מיתת אביו. ברם, בעוד שמסגרת זו, על שני חלקיה, מופיעה ברות רבה (בשינויים מסוימים), הרי שדווקא תוכה של המסגרת – סיפור הפטירה עצמו, שבו מעורב מלאך המוות – חסר!

עובדה זו, שנסקרה עתה, יש בה כדי ללמד שסיפורי הבבלי על מלאך המוות המעורב בפטירתם של ריב"ל ודוד הם פיתוחים בבליים מאוחרים, שאינם משקפים את המסורת הקדומה – היא זו שנשתמרה בירושלמי ובמדרשי האגדה. אף שנתונים אלו מצטמצמים לסיפורים על ריב"ל ועל דוד, יש בהם כדי לעורר חשד סביר, שגם שאר הסיפורים מ„משפחה“ זו הם ממוצא בבלי מאוחר.

ואמנם, עלינו להודות, שאין בנתוני ההשוואה הללו כדי ללמד על זמנם המדויק של הפיתוחים הבבליים – אם הם דווקא ממוצא סתמאי, או שמא הם ממוצא אמוראי מאוחר, ולעניין הזה אנו נדרשים להוכחות שיובאו להלן.

היחס למימרות ודרשות אמוראיות בבבלי. זאת ועוד, בולטת לעין העובדה, שלקביעה העולה משלל הסיפורים הסתמיים שבבבלי, כי מלאך המוות הוא שממית גם את החכמים, אין כל „תמיכה“ או „הזדהות“ אמוראית, ולו בדמות מימרה אחת או דרשה בודדת – בכל הבבלי! (לעיל סע' ג). עובדה זו, שהתפיסה המשתקפת מן הסיפורים הסתמיים שבבבלי „אין לה חבר“ בכל החומר האמוראי „הוודאי“ שבו, גם היא מטה את הכף לאפשרות שהסיפורים שלפנינו הם ממוצא בתר-אמוראי, ולכן שונה התפיסה שהם מייצגים מזו של החומר האמוראי.

היחס לחומר סתמי נוסף בבבלי. ומעל הכל, לצד הסיפורים הסתמיים שבבבלי הנידונים כאן, מצאנו בבבלי בשני מקומות חומר סתמי המורכב משתי שכבות (או יותר), כאשר רק השכבה המאוחרת אוהזת בגישה שמלאך המוות ממית את החכמים – כגישה הסיפורים הסתמיים. שני מקורות אלו מלמדים כי המפנה בעניין מלאך המוות והחכמים שיך לרובד הסתמי היותר מאוחר שבבבלי, ואם כן, לרובד הזה, שהוא בתר-אמוראי, יש לייחס גם את מוצאם של הסיפורים הסתמיים.⁸⁴

להלן נציע את שני המקורות הסתמיים בבבלי (האחד הוא סוגיה והשני הוא סיפור), נבחן אותם וננתחם בזירות, ונבהיר ונבסס בהרחבה את דברינו.

84 שדוד נפטר בעצרת, וע"י איחודן הוא קבע כי דוד „מת בעצרת שחל להיות בשבת“ דומה, כי המפנה בסתם הבבלי, בנוגע למלאך המוות והחכמים, היה הדרגתי, והד לכך עולה מברכות ח ע"א. שכן, הסוגיה שם התייחסה לפסוק (תה' לב, ו) על זאת יתפלל כל חסיד אליך לעת מצא, והציעה מספר דרשות אמוראיות, וביניהן: „רב נחמן בר יצחק אמר: לעת מצא – זו מיתה, שנאמר (שם סח, כא): למות תוצאות“ מיד לאחר דברי רב נחמן בר יצחק ממשיכה הסוגיה: „תניא נמי הכי: תשע מאות ושלשה מיני מיתה נבראו בעולם, שנאמר: למות תוצאות – תוצאות בגימטריא הכי הור. קשה שבכלן – אסכרא, ניחא שבכלן – נשיקה“ נמצא כי הסוגיה מפרשת את דברי רב נחמן בר יצחק לעניין סוג המיתה. כלומר, מאחר שיש מיני מיתה רבים בעולם, כמבואר בברייטא, ראוי לו לצדיק להתפלל לה' שיוזה למיתה יפה. אכן, יושם אל לב, שבכלל סוגי המיתה נזכרת גם מיתה הנשיקה, שהיא מיתה שאין מעורב בה מלאך המוות (ראה לעיל הערה 14). ואם כן, משתמע במובלע, שסוגית הבבלי שלפנינו סבורה שהחסיד יכול לזכות בתפילתו גם במיתה זו. אכן, לעומת המקורות הקדומים (לעיל סע' א-ב), שקבעו שמיתת הגדולים והצדיקים איננה מסורה למלאך המוות כל עיקר, הרי שעתה אנו שומעים שנדרשת לכך תפילה! נמצא, כי הסוגיה הסתמית שלפנינו משמרת „ניצנים ראשוניים“ של מפנה בכוחו

כל יומא דשבתא הוה יתיב וגריס כולי יומא, ההוא יומא דבעי למינח נפשיה קם מלאך המות קמיה ולא יכיל ליה, דלא הוה פסק פומיה מגירסא. אמר: מאי אעבד ליה? הוה ליה בוסתנא אחורי ביתיה, אתא מלאך המות סליק ובחיש באילני, נפק למיחזי. הוה סליק בדרגא, איפחית דרגא מתותיה, אישתיק ונח נפשיה.

נוסח זה, הרווח בדפוסים ובכתבי היד (בשניונים מסוימים – ראה נספח בסוף המאמר), הוא הנוסח המפותח והמשוכלל של סיפור פטירת דוד, אבל יש לסיפור הזה נוסח מקוצר יותר בכת"י מינכן (ראה נספח). יותר מכך, לעומת הנוסח הרווח, ולעומת נוסח כת"י מינכן, שלפיהם מקומו של מלאך המוות בסיפור לא מוטל בספק, וחלקו בעלילה ברור ומובן, הרי ששני כתבי יד – כת"י רומי ב' 127 וכת"י אוקספורד 366 – משמרים נוסחים אחרים, שבהם נפקד מקומו של מלאך המוות בסיפור פטירת דוד (ראה נספח). כך הוא, לדוגמה, נוסח הסיפור, בכת"י אוקספורד 366:

כל יומא דשבתא הוה יתיב וגריס כוליה יומא. ההוא יומא הוה סליק בדרגא וגריס, אשתמיט כרעיה ואיפחית דרגא מתותיה, אישתיק ונח נפשיה.

אמנם, בגלינוני כתבי היד הללו,⁹⁷ בהשפעת הנוסחים המאוחרים, "תיקנו" את ההיעדר הזה – כפי שניתן לראות בנספח.

עתה עלינו לשאול, מה פשרם של נוסחים מיוחדים אלו, ומהו היחס שביניהם לבין הנוסחים האחרים? דומה, שלאור ההערכה המוצעת כאן, על ההתפתחויות שחלו בבבל התלמודית בנוגע לחלקו של מלאך המוות בפטירת גדולי ישראל, ניתן יהיה לצאת מסבך הנוסחים הללו ולהתחקות יפה על אופן התהוותם:

סיפור פטירת דוד, בראשיתו, היה סיפור קצר, כנוסח המופיע בכת"י אוקספורד. לפי נוסח זה, הגורם של מיתת דוד היה אחד – נפילת ה"דרגא" מתחתיו, ובאמת, למלאך המוות לא היה כל חלק באירוע. את הסיפור הזה, קרוב לוודאי, סיפר סתם הבבלי,⁹⁸ הקדום, וברוח תפיסתו, שמיתת גדולי ישראל והחכמים מופקעת מידיה של מלאך המוות.

גם בשלב הבא, שעליו מלמד הנוסח שנשתמר בכת"י רומי ב' (ראה נספח) – בו נוספו לסיפור הקצר הזה מוטיב הבוסתן ונענוע אילנותיו (כ"ל, "לישנא קמא"), אפשר שעדיין לא שולב מלאך המוות לסיפור הזה, אלא "מלאך" בלבד – שהרי ללא התוספת שבין השיטין, נוסחו של כת"י רומי ב' מתמצה במילים "אתא מלאך!"⁹⁹

אכן, משנתחזק מעמדו של מלאך המוות בסתם הבבלי, והחלו לייחס לו את המתת הגדולים והחכמים (וכפי שניכר הדבר בשלל הסיפורים שבסתם), אז, לראשונה, נוצרה האפשרות לשלב את מלאך המוות גם לסיפור פטירתו של דוד – וכך באמת אירע לו לסיפור הזה.

88 וכת"י יונה B. 23. על הנוסח המצוטט בפנים יש שתי הוספות בכת"י מונטיפיורי ובכת"י יונה, ראה נספח בסוף המאמר.

97 למעט תיבת "המות" בכת"י רומי ב' שנוספה בין השיטין, ראה נספח.

98 ראוי לציין שסיפור פטירה דומה לשל דוד מופיע בסתם הבבלי, בכתובות סב ע"ב. על אמורא בבלי בדור הרביעי – רב רחומי. גם הוא. לפי המסופר, היה עוסק בתורה, עד אשר, "איפחית איגרא מתותיה, ונח נפשיה".

99 מוטיב זה, "בא מלאך" מופיע לא אחת בסיפורי הבבלי (כגורם העושה פעולה מסוימת), וזאת כבר במשנתם של אמוראים ראשונים, כאשר אין כל ספק שבמלאך בעלמא מדובר ולא במלאך המוות!

ראה למשל: מגילה טז ע"א; סנהדרין צב ע"ב; נדה ל ע"ב. ולעיתים גם בארמית, "אתא מלאך" למשל, בתענית כה ע"א, בכת"י גטינגן 3; "בעא רחמי ואתא מלאך ושקלה".

גם בפטירת החכמים, כבר לא היו יכולים הלומדים המאוחרים להבין את תירוץ הסוגיה במשמעותו המקורית (או שמה אף נשתכחה מהם משמעות זו), ואז הם הוסיפו את השכבה השנייה: „כי הא דרב חסדא” וכו’.⁹¹ במעשה זה בקשו להבהיר (ובניגוד להבנה הקדומה), כי הקליטה ממלאך המוות באמת איננה מוחלטת, ואף שיש כוח בעסק התורה לעכבו, אין אפשרות להינצל ממנו לחלוטין.

נמצא אפוא, כי סיפור פטירת רב חסדא הוא תוספת מאוחרת בסוגית מכות.⁹² שתילתו בסוגיה זו מקהה את צורתה המקורית ומקשה על הבנתה הראויה מחד גיסא, ומאידך גיסא היא מהווה ביטוי לעמדה החדשה, שמצודתו של מלאך המוות פרושה גם על תלמידי החכמים.

אכן, הבנה זו בסוגית מכות שלפנינו, מלבד שהיא מציגה נכוחה את התהוות הסוגיה, יש לה השלכות משמעותיות נוספות לעניין העיקרי הנידון כאן. שכן, את זאת כבר לימדנו החוקרים (לעיל בראש הסעיף) כי המשא ומתן הסתמי שבסוגיות הבבלי הוא בתר-אמוראי. זאת ועוד, כבר לימדנו הלבני,⁹³ כי לעתים באותה סוגיה עצמה יש שכבות סתמאיות אשר נבדלות זו מזו בידע, בתפיסה ובהבנה של המקורות, והדבר מעיד שלפנינו סתמות מזמנים שונים, שלא יצאו מאותו מחבר, ובלשונו: ⁹⁴ „היו שכבות גם לחומר הסתמאי המראות על קיומם של מספר דורות”.

אמור מעתה, מן השכבה הסתמית הקדומה של סוגיתנו („ראי בעית אימא מאי קולטין ממלאך המוות”) עולה, כי בשלב הראשון גם החכמים הבתר-אמוראים עדיין אחזו בגישה שמלאך המוות אינו ממית את החכמים.⁹⁵ אכן, בשלב מאוחר יותר בתקופה הבתר-אמוראית חל שינוי בגישה זו, ועליו מעידה השכבה הסתמית המאוחרת בסוגיתנו („כי הא דרב חסדא” וכו’).

מכאן אך מתבקשת המסקנה, כי מכלול הסיפורים הסתמיים שבבבלי המלמדים על עליונותו של מלאך המוות על גדולי ישראל מוצאם מן החכמים הבתר-אמוראים, וכנראה מן המאוחרים שבהם! – מסקנה זו מקבלת חיזוק נוסף מניתוח סיפור הפטירה של דוד המלך על נוסחאותיו, וכפי שיוצע עתה.

2. בבבלי שבת ל ע”ב, מופיע סיפור פטירתו של דוד המלך:⁹⁶

91 גם השימוש במונח „כי הא ד” יש בו כדי ללמד על שכבה נוספת (ומאוחרת יותר) בסוגיתנו.

92 לסיפור הזה יש מקבילה במקבץ סיפורי הפטירה במו”ק כח ע”א, ובהחלט אפשרי, שהלומדים המאוחרים העבירוהו ממקבץ זה ושתלוהו בסוגית מכות. יש לזכור, שאחד מסממני ההעברה הם הקשיים שמעורר „החומר המועבר” בהבנת הסוגיה, ראה: אלבק, מבוא לתלמודים, 468 ואילך. סיפור פטירת רב חסדא אכן מעורר קושי של ממש בסוגית מכות, והוא יתיישב יפה אם מדובר בהעברה. (על העברות של סיפורים, ראה: אלבק, מבוא לתלמודים, 474–482). ועל כך ש„העברת מקבילות” מאפיינת את החומר המאוחר שבבבלי, כבר העמידנו ווייס לפני יותר מיובל שנים. ראה: אברהם ווייס, היצירה של הסבוראים (חלקם ביצירת התלמוד) (ירושלים: הוצאת מאגנס, תשי”ג) 17.

93 הלבני, „עיונים” 102–107, והציע שם מספר דוגמאות.

94 הלבני, „עיונים” 102, ושוב: 106.

95 גם השימוש במונח „אי בעית אימא” מלמד שהסוגיה שלפנינו, ביסודה, היא בתר-אמוראית, זאת לאור מה שלימדנו דוד הלבני: „לא מצינו לאמוראים שיאמרו איבעית אימא” ראה: הלבני, מקורות ומסורות, מסכת בבא מציעא (ירושלים: הוצאת מאגנס, תשס”ג) רכג. וראה גם לאחרונה: הלבני, מסכת בבא בתרא, 19. עם זאת, בשכבה סתמית (בתר-אמוראית) זו, עדיין אחזו בגישה שמלאך המוות אינו ממית את החכמים, וזאת בדומה לאשר ראינו בשכבה סתמית אחרת, בסוגית ברכות ח ע”א, לעיל הערה 84.

96 כך הוא הנוסח בדפוס ונציה, דפוס שונצינו, עין יעקב (דפוס ראשון). כת”י פרמה 3010, כת”י מונטיפיורי

שברות רבה (לעיל השוואה למקבילות, עמ' כה-כו), ומאחר שרק בשכבותיו הסתמיות המאוחרות של סיפור זה שולב לתוכו מלאך המוות כגורם הממית, הרי שלפנינו עדות נוספת כי התעצמותו של מלאך המוות ושלטתו על פטירת החכמים משקפת תפיסה בבלית מאוחרת, שכפי הנראה, פרחת ושגשגה בדורות המאוחרים של הסתמאים.¹⁰³

ו. לפשר העמדה המיוחדת שבסיפורים הסתמיים שבבבלי

לאור כלל הנתונים שנמנו בסעיפים הקודמים, מתבקשת עתה השאלה, מה גרם להם לסתמאים לספר סיפורים על חכמים, שבפטירתם מעורב מלאך המוות, ולחרוג בכך, לראשונה, מן הגישה הרווחת מאות בשנים – שלא חל בה שינוי גם אצל קודמיהם, אמוראי בבל – שמיתת החכמים איננה מסורה למלאך הזה?!

להבהרת שאלה זו וחיידודה ראוי להוסיף, שהדבר ברור,¹⁰⁴ כי סיפורי הפטירה הללו, אף שהם מוסבים על עשרה אמוראים מן הדורות הראשונים, ועל דמות מקראית אחת (דוד), לא בהם עניינם של המספרים אלא בעולמם שלהם – את הוויותיהם ומחשבותיהם הם באו להציע ולבטא, וזאת במסווה של סיפורים על דמויות הקדומות להם. כמו כן, אין לנו ספק, שבאמצעות הסיפורים האלו רצו מספריהם להעביר מסרים שונים ומגוונים מתוך עולמם,¹⁰⁵ ותעיד על כך העובדה, שלא נשתו כל הסיפורים בעלילתם ובמוטיבים המשולבים בהם. ברם, לא במסרים המיוחדים של כל סיפור וסיפור ענייננו כאן, אלא במסר העולה מן המוטיב המשותף לכלל הסיפורים – מעורבותו של מלאך המוות. מרכיב חדש זה אומר דרשני, ולבטח מלמד דבר מה על עולמם של המספרים, וזו שאלתנו, מה פשרה של מעורבות זו, ומה יש להסיק ממנה על עולמם של הסתמאים?

אין לנו ספק, שלשאלות מסוג זה קשה, ואף בלתי אפשרי, לתת מענה וודאי, ולו בשל היותנו רחוקים ומרוחקים מתקופת המספרים הבבליים ומעולמם, ועם זאת, יש לתת את הדעת ל„אפשרויות מסתברות“ כמו זו שניציע עתה.

שאנו עדים לשלושה שלבים (הדומים לאלו שבסיפור דוד): בנוסח הקדום לא הוזכרו מלאכים כלל, ולא נתברר למי פנה הקב"ה. בשלב הבא, היו שהוסיפו לגוף הסיפור. ובשלב המאוחר יותר, אצל רבינו חננאל, אף שכנראה בפירושו לסיפור מדובר (ולא בנוסחו) – כבר, „ברור הדבר“ (בהשפעת סתם הבבלי כמובן), שלא במלאכים בעלמא עסקין אלא במלאך המוות.

103 בשולי הדברים מעניין להעיר, כי שילובו של מלאך המוות לסיפור פטירת דוד שבבבלי יוצר, עימות נוסף בספרות חז"ל בין דמותו של משה לדמותו של דוד, כאשר גם בו נמצא שידו של משה על העליונה. שכן, בסיפור פטירת משה (בכל מסורותיו ומקבילותיו, ראה לעיל סעי' א) מודגש שלא מלאך המוות נטל את נשמתו אלא הקב"ה לבדו, וזאת למרות שמלאך המוות רצה וחפץ בכך. ואילו בסיפור פטירת דוד (בגלגולו המאוחר) מודגש דווקא ההיפך – שמלאך המוות הוא שנטל את נשמתו ולא זכה דוד למות בנושקה. על ההשוואה בין משה לדוד בספרות חז"ל בכלל ובמדרש תהלים בפרט, על כך שמשם מוצג כנעלה ונשגב מדוד ועל פשר הדבר ומשמעותו, כבר עמד בהרחבה אביגדור שניאן, ודומה שיש לצרף למסגרת זו גם את הסיפורים הללו (אף שהשוואה זו עולה מן היחס שבין שני מקורות שונים בספרות חז"ל, ולא נמצאת באותו מקור עצמו). ראה: Hanne, „King David of the Sages“, in Avigdor Shinan, Trautner-Kromann, ed., *From Bible to Midrash* (Lund: Arcus, 2005) 68–74. ולאחרונה: שניאן, „בטרקלין ועל סף הבית: משה רבנו ודוד המלך במדרש תהלים“ בתוך משה בר-אשר, יהושע לוינסון, ברכיהו ליפשיץ, עורכים, מחקרים בתלמוד ובמדרש: ספר זכרון לתרצה ליפשיץ (ירושלים: מוסד ביאליק, תשס"ה) 557–570.

104 ראה לעיל הערה 77.

105 ראה למשל: דיימונד, „היאבקות“ אשר ניתח את מקבץ הסיפורים במו"ק כח ע"א.

מעתה, ניתן היה להוסיף את תיבת „המות“ לתיבת „מלאך“ בין השיטין של כת“י רומי ב', שהרי „ברור הדבר“ שלמלאך הזה הכוונה. ובעיקר, מכאן ואילך, חלקו של מלאך המוות בסיפור הלך וגדל:

א. אם בתחילה, בנוסח הקדום (כת“י רומי ב'), היו שתי לשונות לאופן פטירת דוד, עתה, בנוסח המאוחר ממנו, שנשמר בכת“י מינכן, הן חברו לרצף עלילתי אחד – היינו הוסר ה„איכא דאמרי“ ושני המוטיבים, נענוע האילנות ונפילת הדרגא, שולבו יחד לחטיבת אירועים אחת. פיתוח זה, מן הסתם, היה תולדה של התעצמות מעורבותו של מלאך המוות במיתת הגדולים בסתם הבבלי, והוא נועד להבהיר, שכל שאירע בפטירת דוד היה „משלו“¹⁰⁰ ב. אם בנוסח המפותח קמעה (כת“י רומי ב', לפי התוספת שבין השיטין), וגם בנוסח המפותח ממנו (כת“י מינכן) – כל שנאמר לגבי מלאך המוות הסתכם במילים „אתא מלאך המות“ (לפני נענוע האילנות), הרי שבנוסחים המפותחים והמאוחרים יותר של הסיפור, הם אלו שנשמרו בשאר כתבי היד והדפוסים הראשונים, הוא קיבל אזכור נוסף בתחילת הסיפור – „קם מלאך המות קמיה ולא יכיל ליה“ עתה צוינו לבטיו מפורשות – „אמר מאי אעביד ליה“ ובחלק מכתבי היד גם הודגש, שכל לימודו של דוד לא בא אלא להינצל מידו.¹⁰¹ להערכתנו, הנוסחים השונים שנשמרו לנו לסיפור הסתמי של פטירת דוד משקפים יפה מספר שלבים בגלגולי הסיפור ובהתפתחותו ההדרגתית, כאשר נוסחו הרווח משקף את העיבוד המאוחר ביותר של הסיפור הזה.¹⁰² אכן, הואיל וסיפור פטירת דוד הוא ממוצא בבלי מאוחר, כעולה מהשוואתו למקבילה

100 שהרי לפי נוסח כת“י רומי ב', „ואיכ' דאמ' הוה קא סליק בדרגא וכו'“ עשוי להשתמע שסיפור נפילת הדרגא, אשר מציעה לשון זו, השניה, אינה עניין כלל לפעלו של המלאך, אלא היא מסורת אחרת לכל שאירע בפטירת דוד. ברם, במיוזג הלשוניות לשנים והפיתום לעלילה רצופה אחת, יובן ממילא שכשם שנענוע האילנות נעשה על ידי המלאך, כך גם נפילת הדרגא נגרמה על ידו, ובאופן זה חלקו של מלאך המוות בפטירת דוד הוא מלא מוחלט.

101 כן הוא בתוספת גליון כת“י מינכן, וכן בכת“י מונטיפיורי – ראה נוסף והערה 130 להלן.

102 אפשר שהד לכך, ששילוב מלאך המוות לסיפור הפטירה של דוד הוא עיבוד מאוחר יותר, עולה מן הסוגיה בבבלי מכות י ע"א. שנידונה כאן לעיל בסעיף זה. לאחר שקבעה הסוגיה „מאי קולטין, ממלאך המוות“ באה הסוגיה לחזק תירוץ זה ומספרת: „כי הא דרב חסדא וכו'. סיפור פטירת רב חסדא משמש איפוא הוכחה לכך שדברי תורה מגינים ממלאך המוות. אולם לכאורה תמוה, מה ראתה הסוגיה להביא ראיה מסיפור על פטירת אמורא, כאשר יכולה היתה להביא ראיה זהה מסיפור „קדום יותר“ – סיפור פטירת דוד המלך? – וכבר עוררו תמיהה זו בספרות הרבנית (ראה למשל: ר"י עטלינגר, עורך לור, אלטונא, תרט"ו, מכות שם). אכן, לאור דברינו עתה על גלגולי הנוסח של סיפור פטירת דוד, התשובה לכך ברורה – העורך אשר שיבץ את סיפור פטירת רב חסדא לסוגיה במכות, עדיין לא הכיר את הסיפור על מלאך המוות שממית את דוד! והואיל ולפי ניתוחנו (לעיל בפנים) סיפור פטירת רב חסדא עצמו, המשולב בסוגית מכות, שייך לסתם המאוחר, הרי שהסיפור על מלאך המוות ודוד, בבבלי שבת, מאוחר עוד יותר!

מעניין לציין, שהתפתחות דומה, בת שלושה שלבים, אירעה כנראה לגבי סיפור סתמי נוסף, בבבלי ראש השנה יז ע"א. שם מסופר על אמורא בבלי, רב הונא בריה דרב יהושע, שנטה למות ולבסוף נרפא וחיה, וסיפר על עצמו (לרוב עדי הנוסח עולה שסיפר זאת לחברו רב פפא): „אין, הכי הוה, ואמר להו הקדוש ברוך הוא: הואיל ולא מוקים במליה – לא תקומו בהדיה“ אכן, לעומת נוסח זה שבדפוסים, אשר רווח גם בכתבי היד, הרי שבשני עדי נוסח מצויין שאמירה זו הייתה למלאכים: 1. בכת“י ביהמ"ל אדלר 850 הנוסח הוא: „ואמר להן קודשא בריך הוא למלאכיתא הואיל ולא מוקים וכו'“ 2. בקטעים מדפ' פאס (ביהמ"ל 13366), הנוסח הוא: „אמ' להו קודשא בריך הוא למלאכי השרת הואיל ולא מוקים וכו'“ ולעומת נוסח זה שמציין מלאכים בכללות, ועדיין לא שמענו על זהותם המדויקת, הרי שבפירושו רבינו חננאל נאמר (שם): „א"ל אין הכי הוה. כלומר חשוב למיתה הייתי מיהו בקשתי רחמים ונאמר מלפני הקב"ה למלאך המות בשביל לו הוספנו לו שנים לחיות כיון שהוא מעביר במדותיו“ גם כאן יתכן

תורה על ידי? – סיפור זה, שחלו בו ידי סתמאים,¹¹¹ לא על מעלת רבי עקיבא לעומת משה מלמד, אלא על מעלת התורה של מספריו לעומת הדורות שקדמו להם. ביטוי מפורש יותר עולה מן האמור בבבלי ברכות, כ ע"א. שם יש התייחסות לשאלה מדוע התרחשו ניסים דווקא לדורות הראשונים, ובמהלך הדיון משולב קטע סתמי,¹¹² המשווה את לימוד התורה של הדורות האחרונים לדורות הראשונים, וזה לשונו:¹¹³ „בשני דרב יהודה כולי תנאי בניזקין הוה, ואנן קא מתנינן שיתא סדרי! וכי הוה מטי רב יהודה בעוקצין האשה שכובשת וכו' אמר: הוית דרב ושמואל קא חזינא הכא, ואנן קא מתנינן בעוקצין תליסר מתיבתא!“

קטע סתמי זה מלמד על ההערכה הגבוהה של הסתמאים את תורתם לעומת תורת הדורות שקדמום. אכן, מלבד שהערכה עצמית זו מיוחדת ונועזת, שהרי היא נוגדת את התפיסה המקובלת של „ירידת הדורות“ הרי שיש בה כדי ללמד עד כמה פרוחה התורה ושיגשה בישיבות הבבליות באותם ימים, ועד כמה החשיבה הסתמאים. כך מסכם זאת רובינשטיין:¹¹⁴ „When it comes to study of Torah, the Stammaitim do not see themselves as standing on the shoulders of their predecessors; they claim to be head and shoulders above them“

עם זאת, למרות היותם מלומדים יותר מן הדורות הקודמים להם, הכירו הסתמאים בעובדה שהם פחות צדיקים מקודמיהם, וכאמור בברכות שם: „קמאי הוו קא מסרי נפשיהו אקדושת השם, אנן לא מסרינן נפשין אקדושת השם“ ובשל כך, בשונה מ„ראשונים דאתרחיש להו ניסא“ על עצמם, המאוחרים, הם אמרו: „אנן דלא מתרחיש לן ניסא“ ובלשונו של רובינשטיין:¹¹⁵ „later generations of sages are simultaneously more learned and less,“ „pious than their predecessors“

לדעתנו, קביעותיו אלו של רובינשטיין משתקפות יפה גם בסיפורי הבבלי על מלאך המוות והחכמים. הסתמאים הכירו בכך שצדיקותם פחותה מזו של הדורות הקודמים, ואחד הביטויים לכך הוא השלמתם עם העובדה, שמיתתם מסורה לידי מלאך המוות, כשאר כל הבריות. עם זאת, לגדולתם בתורה, שלתפסתם, אף עולה על הדורות הקודמים, היה חייב להיות כאן משקל, ואכן, גדולה זו מסוגלת לעכב ולהשהות את פעילותו של מלאך המוות. יש לשים לב, כי במרבית הסיפורים הללו אכן מודגש ערך התורה כגורם המעכב את המלאך. בשלושה סיפורים (רב חסדא, רבה, דוד) מסופר שהחכם עוסק בתורה כל העת – „דלא הוה פסיק פומיה מגירסא“ ומלאך המוות מבקש תחבולה להפסיקו מלימודו.

111 על עניין זה, ראה גם: Jeffrey L. Rubenstein, „Criteria of Stammaitic Intervention in Aggada,“ in Rubenstein, *Creation and Composition*, 438 (להלן: רובינשטיין, „קריטריונים“).

112 על כך שקטע זה שייך לשכבה הבתרא-אמוראית של הבבלי, ראה גם: רובינשטיין, „קריטריונים“ 434–436.

113 וראה המקבילות לקטע הזה בבבלי: תענית כד ע"א; סנהדרין קו ע"ב. חשוב לציין, כי יש שינויי נוסח משמעותיים בקטע הזה, הן בעדי הנוסח של בבלי ברכות והן בין המקבילות עצמם – וגם נתונים אלו מעידים על כך שהקטע שלפנינו שייך לשכבה המאוחרת של הבבלי.

114 רובינשטיין, התרבות, 35. על ירידת הדורות, ראה לדוגמה: בבלי שבת, קיב ע"ב; עירובין נג ע"א; יומא ט ע"ב; ירושלמי שקלים ה, א, מח ע"ג–ע"ד; שם גיטין ו, ז, מח ע"ב. למקורות נוספים, תלמודיים ובתרא-תלמודיים, ואף למקורות שמהם עולה תפיסה שונה, ראה במיוחד: Menachem Kellner, *Maimonides on the „Decline of the Generations“ and the Nature of Rabbinic Authority* (Albany: State Univ. of New York Press, 1996) esp. 7–26. וראה גם: Michael S. Berger, *Rabbinic Authority* (New York: Oxford Univ. Press, 1998) 78–79.

115 רובינשטיין, התרבות, 34.

לדעתנו, משילוב מלאך המוות לסיפורי הפטירה יש להסיק שהמספרים באמת חשו עצמם נחותים בפניו, וסבורים היו שמיתתם מסורה בידו, מחד גיסא. אולם מאידך גיסא, לא את נחיתותם ביקשו המספרים להבליט, אלא דווקא את מעלתם – שבשונה משאר כל הבריות, הם, ורק הם, יכולים לעכב את מלאך המוות בדרישותיהם, להקשות עליו בביצוע משימתו, ולכל הפחות, לזכות ממנו במיתה נוחה¹⁰⁶ – וכל זאת משום גדולתם המיוחדת בתורה. דברינו אלו יתבררו יותר, ואף יתבססו, לאור הדברים הבאים.

1. במחקריו האחרונים, הצביע ג'פרי רובינשטיין על העובדה, שערך התורה ולימודה הגיע לשיא תוקפו ועוצמתו דווקא בימי הסתמאים. כך למשל, את הביטויים המופלגים ביותר בשבח לימוד התורה אנו מוצאים דווקא בתלמוד הבבלי, ולא במקורות הארץ-ישראליים, ומוצאם של ביטויים אלו – סתמאי. דוגמה יפה לכך משמשת האמרה, „מניחין חיי עולם ועוסקים בחיי שעה”¹⁰⁷ הנמצאת רק בבבלי, ואשר משקפת את תפיסתם של הסתמאים לכל עיסוק חלופי ללימוד התורה. כך מסכם זאת רובינשטיין¹⁰⁸:

While Palestinian sages and Babylonian Amoraim of course esteemed Torah study as the most laudable activity, its value never reached the same level as in Stammaitic culture where it trumped other pietistic practices to the point of becoming almost the only spiritual path of any worth, and perhaps the only reason for living.

לדעתו, תופעה זו נבעה מתופעה נוספת שהתרחשה באותם ימים – עליית הישיבות (the rabbinic academy =), וכפי שניסח זאת רובינשטיין באחת מקביעותיו: ¹⁰⁹ „For the Stammaim, the 'world of the academy' was coextensive with the world, and the 'central activity of the academy played a critical role in the structure of the universe” 2. בהקשר זה, הוסיף רובינשטיין¹¹⁰ מתברר כי הסתמאים העריכו את תורתם במעלה גבוהה יותר מתורת הדורות שקדמו להם. כך למשל, עולה מן הסיפור בבבלי מנחות, כט ע"ב, על משה הנמצא בישיבת רבי עקיבא, „ולא היה יודע מה הן אומרים” עד אשר משה עצמו, „חזר ובא לפני הקב"ה, אמר לפניו: רבונו של עולם, יש לך אדם כזה, ואתה נותן

106 1. על דרישות המעכבות את מלאך המוות – בסיפורים על רבי אלעזר (מ"ק כח ע"א), רב ששת (שם), רב אסי (שם) ורבי חנינא בר פפא (כתובות עז ע"ב). אכן, יש שהעיקוב הוא בזמן הפטירה ויש שהוא במקום הפטירה. רבי אלעזר דוחה את מלאך המוות לזמן מסוים, בטענה שאוכל תרומה. רבי חנינא בר פפא ורב אסי דוחים את מלאך המוות בשלושים יום, בטענה שהם מעוניינים לחזור על תלמודם. ולעומתם, רב ששת מבקש שינוי במקום הפטירה, שלא ימות בשוק אלא דווקא בבית. 2. על הערמת קשיים על מלאך המוות – בסיפורים על רבי חייא (מ"ק שם), רב חסדא (מ"ק שם), רבה בר נחמני (ב"מ פו ע"א) ורוד המלך (שבת ל ע"ב), שבכולם נקט מלאך המוות בתחבולה מסוימת כדי להמיתם. 3. על מיתה נוחה – בסיפורים על רב נחמן (מ"ק שם) ורבא (שם), שזכו למיתה נוחה.

107 ראה לדוגמה: שבת לג ע"ב (הסיפור על רשב"י ובנו); ביצה טו ע"ב (הסיפור על ר"א ותלמידיו); תענית כא ע"א (הסיפור על אילפא ור' יוחנן).

108 על העניין כולו, ראה: רובינשטיין, התרבות, 31–35. והציטוט בפנים, שם, 33.

109 לעניין זה, עליית הישיבות, הקדיש את הפרק הראשון בספרו, רובינשטיין, התרבות, וראה גם מאמרו: Jeffrey L. Rubenstein, „The Rise of the Babylonian Rabbinic Academy: A Reexamination of the Talmudic Evidence,” *JSIJ* 1 (2002) 55–68. הציטוט בפנים, הוא מספרו התרבות, 31.

110 רובינשטיין, „התרבות” 33–35.

היזקא – שאני" לאמור: במקום שיש היזק קבוע וקיימת סכנה – אין המצוה מגינה על שלוחיה.

יותר מכך, לעומת האמורא רב אמי שקבע, "אין מיתה בלא חטא, ואין יסורין בלא עוון" הרי שהסוגיה הסתמית (שבת נה ס"א-ע"ב), שדנה בדבריו ומקשה עליהם, חותמת במסקנה הפוכה: "שמע מינה, יש מיתה בלא עוון, ויש ייסורים בלא חטא" לשון אחר: צדיקות לא מבטיחה הגנה ממוות, ואף איננה מספקת שמירה מיסורים.

ואף זאת, הגם שיש מספר התייחסויות אמוראיות לעניין זעמו של ה', הרי שסתם הבבלי הוא שמפתחו ומעצים אותו – הן בספרו על הסכנה הנשקפת ב"עידן ריתחא" גם כלפי גדולי החכמים, הן בהדגישו שיש זעם שמימי בכל יום ויום, שאינו מותנה במציאות של חטא ועוון, ואשר יכול לפגוע בכלם.¹²²

תפיסה זו, שחשף בפנינו אלמן, של פיחות בשכר הצדיקות וצמצום כוחן של זכויות (בתחומי הגמול והשכר בעולם הזה), אף שביסודה היא אמוראית וקודמת לזמנם של הסתמאים, הרי שהיא נשתרשה, נתקבלה על הכול ונתעצמה דווקא בעולמם, כפי שממחישים זאת יפה המקורות שצוטטו והוזכרו כאן.

ברור אפוא, שעל רקע המקורות הללו ולאור משמעותם, מתרחב ומתחזק הבסיס להצעתנו, שסיפורי הבבלי על מלאך המוות הממית את החכמים הם סיפורים אשר שוללים מן החכמים את מיתת הנשיקה¹²³ (להם, "זכור" עד כה בספרות התנאית והאמוראית), ואשר בעצם משווים את החכמים בעניין הזה לשאר כל הבריות שמיתתם בידו – מהווים גם הם ביטוי, אחר כמובן, לערך הצדיקות הנחלש בכבל הסתמאית.

אנו מודעים לכך, שהצעתנו זו מתבססת על עולמם הפנימי של הסתמאים, ואין היא, "חושפת" בפנינו אלא, "rabbinic ideology"¹²⁴ ובתחום החיים הדתיים בלבד (היחס לצדיקות והיחס ללימוד תורה). ובאמת, מן הראוי היה לבחון את סיפורי מלאך המוות שבבבלי על רקעים

122 על זעמו של ה' בכל יום, ראה: ברכות ז ע"א; טנהדרין קה ע"ב; עבודה זרה ד ס"א-ע"ב (ואלו הן שלוש סוגיות מקבילות בבבלי). על "עידן ריתחא" וסכנתו גם לחכמים, ראה: בבא קמא ס ע"ב (המסופר על רבא); מנחות מא ע"א (המסופר על רב קטינא). ועל העצמת זעמו של ה' בסתם הבבלי לעומת המימרות האמוראיות, ראה במיוחד: אלמן, "הסבל" 332-339.

123 על מיתה זו ראה לעיל סעיף א, 3; סעיף ב, מדרשי האגדה, עמ' י.

124 כניסוחה של קתרין הוד: "Aggadic stories, although not usable as sources for real history, reveal, a lot about rabbinic ideology" ראה: Catherine Hezser, *Form, Function, and Historical Significance of the Rabbinic Story in Yerushalmi Neziqin* (Tubingen: Mohr Siebeck, 1993) 405 כוונתנו היא, שסיפורי הבבלי על מלאך המוות והחכמים אינם מספקים, "חומר היסטורי" על הדמויות שבסיפורים, אלא, "השקפת עולם" של המספרים). ויש לצרף לכך את הערתו של גפני: "עלי להסתייג מדבריה, שכן 'rabbinic ideology' היא 'real history', לא פחות מכל היבט אחר של דברים שהתרחשו בעבר" ראה: ישעיהו גפני, "ארץ ישראל בתקופת המשנה והתלמוד: חקר שנות דור – הישגים ותהיות" קתדרה 100 (תשס"א) 222, הערה 98.

ולעצם העניין, אין להמעט במשקלה של הצעה המתבססת על עולמם הפנימי של חכמי בבל (המאוחרים), ובפרט לאור מה שלימדנו ריצ'רד קלמין במספר מחקרים. כי בשונה מחכמי א"י שהיו פתוחים לסביבתם התרבותית והחברתית (ובלשונו: "the non-rabbinic world"), הרי שחכמי בבל היו יותר מנותקים מסביבתם וחיו בעיקר בתוך עולמם – עולם בית המדרש. על תופעה זו, ביטוייה וגורמיה, ראה: Richard L. Kalmin, *The Sage in Jewish Society of Late Antiquity* (London: Routledge, 1999) 1-24 and elsewhere; his, "Doeg the Edomite: From Biblical Villain to Rabbinic Sage," in Craig A. Evans, ed., *The Interpretation of Scripture in Early Judaism and Christianity* (Sheffield: Sheffield Academic Press, 2000) 390-405; and lately, his "Midrash and Social History," in Carol Bakhtos, ed., *Current Trends in the Study of Midrash* (Leiden: Brill, 2006) 133-59.

בשניים אחרים (רב אסי, רבי חנינא בר פפא) מסופר שהחכם מבקש לחזור על תלמודו במשך שלושים יום, ומלאך המוות נעתר לבקשה. וסיפור נוסף, פטירת ריב"ל, פותח בתיאור שהחכם, "עסיק בתורה"

אכן, גם בסיפורים האחרים, שבהם לא הובלט ערך התורה, קרוב לוודאי שעצם העובדה, שדמות הגיבור היא של תלמיד חכם ידוע ומפורסם, יש בה כדי להעביר את המסר הזה, ולו במובלע, שמעלת תורתו היא שהעניקה לו מעמד מיוחד מול מלאך המוות.

כללו של דבר, אנו סבורים, שסיפורי הבבלי הסתמיים על מלאך המוות היוו דרך מיוחדת לבטא את המתח בין ערך הצדיקות (הנחלש) לבין ערך התורה (המתעצם) בעולמם של הסתמאים, כאשר בעיקר את האחרון מבין השניים רצו המספרים להבליט ולהעמיד על משקלו – גם ביום הפטירה, ללומדי התורה ולחכמיה, ורק להם, יש עדיין, "מה לומר" וכל זה מכוח תורתם.¹¹⁶

להשלמת התמונה ולחזיון הצעתנו, יש לתת את הדעת גם למחקריו של יעקב אלמן, בנוגע לשאלת הצדק האלוהי והסבל האנושי בספרות התלמודית והמדרשית.¹¹⁷ במחקריו אלו, הצביע אלמן על העובדה, שדווקא בתלמוד הבבלי¹¹⁸ במימרות המיוחסות לאמורא רבא, ובעיקר בחומר הסתמי שבו – ניתן ביטוי ניכר ומגוון לכך שסבל וייסורים בעולם הזה הם גם נחלתם של הצדיקים, והם חשופים לצרות ולאסונות כשאר כל הבריות. מתברר כי הם אינם מקבלים יחס שונה בתחומים הללו למרות מעלתם וצדיקותם, וזכויותיהם לא משמשות להם לעזר ולמגן מפני מוות ופגעים רעים.

כך הוא סיכם זאת במאוחר שבמחקריו:¹¹⁹

In short, the *Bavli* seems willing to admit that in many cases the righteous do not receive just treatment in this world. The merit they accrue, which should protect them against life's vicissitudes, does not influence significant aspects of their lives.

גישה זו, קובע אלמן, בולטת במיוחד בסתם הבבלי.¹²⁰ כך למשל, בעוד שהאמורא ר' אלעזר אמר, "שלוחי מצוה אינן ניוזקין" הרי שהסתם קובע, ובהקשרים שונים:¹²¹ "היכא דקביעא

116 ככאלו, מן הסתם, נועדו סיפורים אלו גם לרומם קרנה של תורה באוזני קהלם, ואף להציב בפניהם, באמצעות דמויות החכמים ששולבו בסיפורים, דגם ומודל לחיקוי – וכקביעתו הכללית של פרנקל, עיונים, 66, בנוגע לטיבם של סיפורים על בית המדרש ועל תלמידי חכמים.

117 אלמן דן בנושאים הללו במספר מחקרים, ראה במיוחד: "The Suffering of the Righteous in Palestinian and Babylonian Sources," *JQR* 80 (1990) 315–39; "Righteousness as Its Own Reward: An Inquiry into the Theologies of the Stam," *PAAJR* 57 (1991) 35–67; (להלן: אלמן, "צדיקות כשכרה"); וראה גם: Elman, "The Contribution of Rabbinic Thought to a Theology of Misfortune," in Shalom Carmy, ed., *Jewish Perspectives on the Experience of Suffering* (Northvale, N.J.: Jason Aronson Inc., 1999) 155–212. על מחקריו הנוספים, ראה: אלמן, "התרומה", 162. הערה 12. המחקר המהותי ביותר לדיונו כאן הוא: אלמן, "צדיקות כשכרה" וראה גם להלן הערה 120.

118 וזאת בשונה מן הירושלמי ומדרשי האגדה הקדומים, שכאופן יחסי מתעלמים מעניין זה – הסכל הלא מוצדק של הצדיקים. וממעטים לעסוק בו. אלמן אף עמד על פשרה של תופעה זו והציע לה מספר גורמים וסיבות, ראה: אלמן, "הסכל", 337–339; אלמן, "התרומה", 163–165.

119 ראה: אלמן, "התרומה", 162.

120 ראה בעיקר: אלמן, "צדיקות כשכרה" ובפתיח, 35–36. בנוגע לדוגמאות שויבאו בפנים, ראה גם סיכומי, 62.

121 המצוטט כאן הוא מיומא יא ע"א, וראה גם: פסחים ח ע"ב; קידושין לט ע"ב; חולין קמב ע"א.

לבין החסידים עצמם) – בין „מעשה“ לבין „תלמוד“, כאשר ההכרעה היא כמובן „גדול תלמוד“¹²⁹

דא עקא, משימות אלו, והדומות להן, חורגות מגבולותיו של מאמרנו זה, ובקעה להתגדר בה בעתיד השארנו כאן, לחשיפת כיוונים אחרים (או משלימים) להתרת „חידה ספרותית“ זו – מה פשרם של סיפורי הבבלי על מלאך המוות ועל מעמדו המתחזק.

סיכום

מחקרנו הוקדש לבירור עמדתה של ספרות חז"ל בנוגע לשאלה, האם מלאך המוות ממית את החכמים אם לאו, והוא מעלה את המסקנות הבאות.

שתי גישות בספרות חז"ל. בחומר הקיים בספרות חז"ל על-אודות מלאך המוות ניצבות שתי גישות באשר לכוחו ושליטתו על גדולי הדורות וחכמי ישראל.

העמדה האחת, הקדומה, היתה שהגדולים והחכמים מופקעים מתחומו של מלאך המוות. עמדה זו משוקעת במדרשי ההלכה, והיא נמצאת, במפורש ובמובלע, גם בחומר הקיים בתלמוד הירושלמי ובמדרשי האגדה הארץ-ישראליים.

באשר לתלמוד הבבלי – לא נראה שחל שינוי בעמדה הנזכרת, וזאת הן בחומר התנאי והן בחומר האמוראי שבו. אבל בסתם הבבלי, בשלל סיפורים, אנו עדים בבהירות לגישה חדשה, לפיה מלאך המוות הוא שאחראי למיתתם של תלמידי חכמים וגדולי ישראל.

לזמנה של הגישה השונה. הערכתנו היא שהסיפורים הסתמיים שבבבלי, המשקפים גישה חדשה, הם בתר-אמוראים. הערכה זו ביססונה הן על השוואה למקבילות ארץ-ישראליות, הן על השוואה למימרות ולדרשות האמוראיות שבבבלי, ובעיקר על ניתוח מקורות סתמיים נוספים בבבלי, שמהם עולה כי דווקא שכבת הסתם המאוחרת היא שמשקפת את התפיסה, העולה בקנה אחד עם זו של סיפורי הבבלי – שמלאך המוות ממית את החכמים.

לפשר גישתם של הסתמאים. לדעתנו, עמדה שונה זו, שננקטה על ידי סתם הבבלי, נולדה על רקע התפיסה שהדורות המאוחרים צדיקים פחות מן הדורות הקדומים, מחד גיסא, ומאידך גיסא, תורתם של הדורות המאוחרים עולה על תורתם של הדורות הקדומים. תפיסה זו, כבר הוכיח ג'פרי רובינשטיין, מאפיינת את הסתמאים, ואנו סבורים כי היא משתקפת גם מן הסיפורים על מלאך המוות שממית את החכמים. להשלמת התמונה ולביסוס הצעתנו, התייחסנו גם למחקריו של יעקב אלמן, המלמדים על פן נוסף של היחלשות מעמד הצדיק וכוחו אצל הסתמאים – שביטוייה בכך שאין זכויותיו מגינות עליו מפני סכל וייסורים בעולם הזה. אכן, בעניין זה, גישתם המיוחדת של הסתמאים, השארנו פתח לבירורים ומחקרים נוספים בעתיד – ואף הדגמנו, בחתימת מאמרנו, שני ערוצים שכאלו.

129 הדגשנו פרט זה, של מתחים בין ערכים, משום שמקובל על החוקרים שמתקופת האמוראים ואילך חלה דעיכה במעמד הקדושים והחסידים (ראה למשל: ספראי, „חכמים קדושים“ 67). כך שאפשר שלפנינו ביטוי למתח בין ערכים, ולא בין קבוצות אנשים. כמו כן, למסגרת זו של מתחים, בין „מעשה“ לבין „תלמוד“ יש לצרף את שהראה אלמן (אף שעסק בעיקר בחומר האמוראי), כי מאמרי הבבלי המתייחסים לחשיבות לימוד התורה עולים במספרם בהרבה על מאמרי הבבלי בעניין התפילה בבית הכנסת וחשיבותה (ואלו האחרונים גם באים ברובם מארץ ישראל). ראה: Yaakov Elman, „Torah ve-Avoda: Prayer and Torah Study As Competing Values in the Time of Hazal,” in Adam Mintz and Lawrence Schiffman, eds., *Jewish Spirituality and Divine Law* (New York: Yeshiva Univ. Press, 2005) 61–124, esp. 114.

נוספים ובהקשרים רחבים יותר – ספרותיים, תרבותיים וחברתיים, כמו השניים הבאים:

1. כך למשל, מעניין היה לבחון את הסיפורים הללו על רקע מעמדם ודמותם של מלאכים בכלל – בספרות חז"ל, ובתלמוד הבבלי בפרט.¹²⁵ ואכן, מעניין לציין, כי מבדיקה ראשונית שעשינו עולה, כי הממצא שחשפנו כאן לגבי נחיתותו של מלאך המוות מול חכמי ישראל – בספרות חז"ל (למעט החומר שבסכתם הבבלי) משתלב יפה למעמדם הנחות של כלל המלאכים בספרות זו.¹²⁶

2. כמו כן, יש לתת את הדעת לאפשרות, שסיפורים אלו שבבבלי, באופן כזה או אחר, שייכים למערכת היחסים והמתחים שבין דמות האיש הקדוש לבין דמות החכם.

בדמות הקדוש, החסיד ואיש המעשה – בתקופת הבית השני, המשנה והתלמוד, ביטבו ובמעמדו בעולמם של חכמים ובספרותם – עסקו לא מעט מלומדים וחוקרים.¹²⁷ נאמר בקצרה, כי החוקרים העמידונו על כך שהקדושים והחסידים לא השתייכו לחוגי החכמים, אלא הם ניהלו חיים שונים, טיפחו ודגלו בערכים אחרים, והם התבלטו בעשיית ניסים ומופתים. מסתבר ששררה מתיחות בין החכמים לבין האנשים הללו, וזאת בשל הבדלי הערכים והתפיסות הדתיות שביניהם, ואף ניתן להתחקות על מתחים אלו באופנים שונים בתוככי הספרות התלמודית והמדרשית.

לאור מחקרים אלו ובדרכם, יש לבדוק את האפשרות,¹²⁸ שמה סיפורי הבבלי המרוממים את ערך לימוד התורה מחד גיסא, ומאידך גיסא מנמיכים את ערך הצדיקות, הם ביטוי נוסף או שריד, מאוחר אמנם, של המתחים בין הערכים הללו (ולאו דווקא בין החכמים

125 על מלאכים בתלמוד הבבלי ובשאר ספרות חז"ל, ראה למשל: שמואל אבא הורודצקי, המסתורין בישראל: גנוי סתר (תל-אביב: הוצאת ספרים נ. טברסקי, חברה בע"מ, תשי"א) בעיקר 110-120; אפרים אלימלך אורבך, "פמליא של מעלה" בתוך ספרו, חז"ל – פרקי אמונות ודעות (ירושלים: הוצאת מאגנס, תשנ"ח) 160-115; יונה פרנקל, "מעשה מרכבה ומלאכים" בתוך ספרו, סיפור האגדה: אחדות של תוכן וצורה (תל-אביב: הוצאת הקיבוץ המאוחד, תשס"א) בעיקר 333-345. וראה גם: Arthur Marmorstein, "Angel and Angelology," *EncJud* (2nd ed., 2007) 2:156-58; Bill Rebigier, "Angels in Rabbinic Literature," in Friedrich V. Reiterer, Tobias Nicklas, and Karin Schopflin, eds., *Deuterocanonical Literature* (Berlin: Walter de Gruyter, 2007) 629-44. וראה גם ההערה הבאה.

126 על נחיתות המלאכים בספרות חז"ל, על ביטוייה וגווניה ועל פשר העניין (נוסף לנוכחים בהערה הקודמת), ראה במיוחד: 281-89 (1991) *Judaism* 40 (1991) 281-89; David E. Fass, "How the Angels Do Serve," *Judaism* 40 (1991) 281-89. וראה גם לאחרונה: יעקב אזולאס, "אין מלאך אחד עושה שתי שליחויות" (בראשית רבה נ, ב), עיון בסוגיית הגבלת כוחם של המלאכים בתרגומים הארמיים לתורה" בית מקרא נב (תשס"ז) 95-111.

127 ראה למשל: שמואל ספרא, "חסידים ואנשי מעשה" ציון נ (תשמ"ה) 133-154 (להלן: ספרא, "חסידים"); ישראל ל' לוי, מעמד החכמים בארץ ישראל בתקופת התלמוד (ירושלים: יד יצחק בן צבי, תשמ"ו) 71-73; Lee I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity* [Jerusalem: Yad Izhak] 105-9 (Ben-Zvi, 1989). ובשנים האחרונות, ראה בעיקר: Richard Kalmin, "Holy Men, Rabbis, and Demonic Sages in Late Antiquity," in Kalmin and Seth Schwartz, eds., *Jewish Culture and Society under the Christian Roman Empire* (Leuven: Peeters, 2003) 213-49; ריצ'רד קלמין, "קדושים וחכמים בשלהי העת העתיקה" בתוך: ישראל ל' לוי, עורך, רצף ותמורה: יהודים בארץ ישראל הביזנטית-נוצרית (ירושלים: יד יצחק בן צבי, תשס"ד) 210-232; David Levine, "Holy Men and Rabbis in Talmudic Antiquity," in Marcel Poorthuis and Joshua Schwartz, eds., *Saints and Role Models in Judaism and Christianity* (Leiden: Brill, 2004) 45-57; Chana Safrai and Ze'ev Safrai, "Rabbinic Holy Men," in Poorthuis, *Saints and Role Models*, 59-78 (להלן: ספרא, "חכמים קדושים").

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